PREFACE

This is the second edition of "The Historical Development of the Indian Act," the first (January 1975) by Kahn-Tineta Miller and George Lerchs, Policy, Planning and Research Branch. Following depletion of limited stocks, the Branch decided that a second edition should be printed incorporating additional historical material. The current Research Branch contracted Robert G. Moore, a history graduate, to prepare a draft manuscript. This manuscript was then edited by John Leslie and Ron Maguire, Treaties and Historical Research Centre. This second edition incorporates elements from both the first edition and Robert Moore's research.

The purpose of this paper is to acquaint Departmental officials and researchers with the main themes of Indian policy and legislation from colonial times. It is not intended to be a definitive account, but rather a guide to further research, and a stimulus for policy discussion. It is not an official Departmental publication but an internal working paper and the views expressed are not necessarily those of the Department.

A brief word about the organization of this paper. It has two major sections: Pre-Confederation 1755-1867, and Post-Confederation, 1867-1951. The footnotes for each chapter appear at the end of the respective section. A select bibliography lists standard reference works consulted in preparation of the paper. An "Administrative Outline of Indian Affairs", prepared

by the Public Records Division, Public Archives of Canada, is included at the beginning to acquaint the reader with major changes in organization and personnel. Map selections from the Territorial Evolution of Canada (EMR, 1969) appear throughout the text to give the reader some idea of the geographical areas under discussion.

To further facilitate the work of researchers key words have been underlined in the body of the text, such as: reserve lands, band membership, elections, etc.. Copies of many of the references used in the preparation of this paper are available for review in the Treaties and Historical Research Centre.

THE HISTORICAL DEVELOPMENT OF THE INDIAN ACT

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MAPS*

* All maps are from the Territorial Evolution of Canada, produced and printed by the Surveys and Mapping Branch, Department of Energy, Mines and Resources. Copies may be obtained from the Map Distribution Office, 615 Booth Street, Ottawa, Canada. K1A 0E9.

ADMINISTRATIVE OUTLINE - INDIAN AFFAIRS

The following is a brief administrative resumé outlining the historical development of the administration of Indian Affairs. It is not a comprehensive listing of every important event relating to the department's development, but is intended as a guide to enable researchers to correlate important legislative events with a particular departmental structure or organization. This outline was prepared by the Public Records Division, Public Archives of Canada, and is reproduced here with their permission.

15 April 1755	- Sir William Johnson appointed Superintendent of Indian Affairs, Northern Department.
1763	- Jurisdiction over Indian Affairs in the old Province of Quebec placed under the control of the Commander of the Forces.
1774	- Colonel Guy Johnson appointed Superintendent of Indian Affairs.
1777	- Hon. Michael Francklin appointed Superintendent of Indian Affairs for Nova Scotia.
1782	- Sir John Johnson succeeded Colonel Guy Johnson as Superintendent of Indian Affairs under the new title Superintendent-General of Indian Affairs and Inspector General of the Indian Department. John Cunningham replaced Michael Francklin as Superintendent in Nova Scotia.
1794	- Office of Deputy Superintendent-General created to assist Sir John Johnson because he was absent so frequently. Resident agents served under the Deputy Superintendent.
1796	- Responsibility for Indian Affairs in Upper Canada given to the Lieutenant-Governor.
1800	- Responsibility for Indian Affairs in Lower Canada given to the Governor-General.
1816	- Jurisdiction over Indian Affairs in Upper and Lower Canada transferred to the Commander of the Forces.
2 August 1828	- Position of Superintendent-General of Indian Affairs and Inspector General of the Indian Department abolished and the office of the Chief Superintendent of Indian Affairs created (Major-General H.C. Darling appointed to this post).

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13 April 1830 - Indian Department split into two offices. In Upper Canada control was given to the Lieutenant-Governor (Colonel James Givins appointed Chief Superintendent). In Lower Canada control remained with the Military Secretary (Lieutenant-Colonel D.C. Napier, former resident agent at Montreal, was transferred to Quebec and created Secretary for Indian Affairs). At this time the reserve system was established in Upper Canada.

1841 - With the Union of 1841 the two offices of the Department were amalgamated and placed under the authority of the Governor-General.

1844 - Following the recommendation of the Commission of Inquiry into the Indian Department, 1842, a general reorganization of the Department was undertaken. The Civil Secretary was designated as Superintendent-General for Indian Affairs and the office of Chief Superintendent was abolished.

1860 - Responsibility for Indian Affairs transferred from Imperial control to the Province of Canada (23 Victoria Chap. 151). The Crown Lands Department assumed control of Indian matters and the Commissioner was designated as Chief Superintendent.

17 March 1862 - Office of Deputy Superintendent General created (O/C 17 March 1862), William Spragge appointed to the position.

1867 - At Confederation control of Indian matters was given to the federal government and responsibility delegated to the Department of Secretary of State for the Provinces. The Secretary of State became Superintendent-General of Indian Affairs.

1873 - The Department of the Interior was created (36 Victoria Chap. 4) and an Indian Lands Branch set up within it. A Board of Commissioners was established to administer Indian affairs in Manitoba, British Columbia and the North-West Territories (P.C. 1873-111).

1874 - L. Vankoughnet appointed Deputy Superintendent-General of Indian Affairs.

1875 - The Indian Boards were abolished and a system of superintendents and agents established. These were modelled on the Ontario administrative structure (P.C. 1875-1052/342D). At this time the Victoria, Fraser, Manitoba and North-West Superintendencies were set up.

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1876 - Indian Act (39 Victoria Chap.18) passed which consolidated and revised all previous legislation dealing with Indians in all existing provinces and territories. Board of Reserve Commissioners set up to settle the Indian reserve question in British Columbia.

1880 - Independent Department of Indian Affairs (43 Victoria Chap. 28) was set up. The Minister of the Interior, however, continued as Superintendent-General of Indian Affairs and presided over the new department.

1882 - Central Indian Superintendency in Ontario abolished and replaced by the various agencies already in existence.

1885 - Four new branches created to revamp the departmental structure. These were a Statistics and School Branch, a Correspondence Branch, a Registry Branch and a Technical Branch. The Technical Branch prepared surveyors' drawings and instructions. These joined the older Lands Sales Branch and Accountant's Branch.

1886 - Department empowered to prepare and register letters patent conveying Indian lands to purchasers (49 Victoria Chap.7). This created the position of Registrar of Patents.

1889 - Two new branches were created. These were the Land and Timber Branch and the Statistical, Supply and School Branch.

1893 - Hayter Reed was appointed Deputy Superintendent of Indian Affairs.

1894 - In a general effort to improve educational facilities for Canadian Indians an independent School Branch was established.

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1897 - James A. Smart, Deputy Minister of the Interior, was appointed Deputy Superintendent of Indian Affairs. He undertook a general reorganization of the Department of Indian Affairs. First of all a distinct deputy head of the Department was abolished, the Deputy Minister of the Interior performing that role. The Indian Commissioner's office in Regina was moved to Winnipeg and two new inspectorates were added in the North-West Territories and one in Manitoba. Some agencies were disbanded and the inspection function at Winnipeg assumed by the Commissioner. At headquarters the administration was reduced to three branches - the Secretary's Branch, the Accountant's Branch and the Lands and Timber Branch. As well there was an Inspector of Indian Agencies and Reserves and an Inspector of Timber.

1902 - Frank Pedley was appointed Deputy Superintendent of Indian Affairs, ending the system whereby the Deputy of the Interior held that post.

1904 - A medical inspector, Mr. P.H. Bryce, was added to headquarters' staff.

1905 - Position of Chief Surveyor was created.

1909 - Revamping departmental structure undertaken by Frank Pedley. Several distinct branches were set up to reflect the expanded nature of the Department's activities. These were the Secretary's Branch (J.D. McLean, Assistant Deputy Superintendent and Secretary of the Department); Accountant's Branch (D.C. Scott, Chief Accountant and Superintendent of Indian Education); Land and Timber Branch (W.A. Orr, Clerk of Land and Timber and Registrar of Land Patents); Survey Branch (S. Bray, Chief Surveyor); Records Branch (G.M. Matheson, Registrar); and School Branch (M. Benson, Clerk of Schools).

1912 - Royal Commission on Indian Affairs for the Province of British Columbia appointed.

1913 - D.C. Scott appointed Deputy Superintendent of Indian Affairs.

1915 - Architect's Branch created at headquarters under R.M. Ogilvie.

1916 - Report of the Royal Commission on Indian Affairs for the province of British Columbia completed.

1924 - Amendment to Indian Act (14-15 Geo. V. Chap. 47) bringing Eskimos under the responsibility of the Superintendent-General of Indian Affairs.

1929 - Agreement concluded respecting reserve lands in Manitoba and Alberta stipulating that they would remain under federal control when these western provinces assumed control of their natural resources.

1932 - Dr. H.W. McGill appointed Deputy Superintendent-General of Indian Affairs.

1936 - The Department of Indian Affairs was made a branch of the Department of Mines and Resources (1 Ed. VIII Chap. 33). The Indian Affairs Branch was placed under Dr. H.W. McGill as Director. The branch included the following components: Field Administration (four inspectors, one Indian Commissioner and one hundred and fifteen agents); Medical Welfare and Training Service (responsible for schools, employment and agricultural projects); Reserves and Trust Service (responsible for land matters and timber disposal); Records Service (responsible for current files and historical material).

1945 - Indian Health Services was transferred from the Department of Mines and Resources to the Department of National Health and Welfare (P.C. 1945-6495). At this time Eskimo Health Services was also transferred from the responsibility of the Northwest Territories Division of Lands, Parks, and Forests Branch. R.A. Hoey was appointed Director of Indian Affairs Branch.

1947 - The Welfare and Training Division was split into a Welfare Division (responsible for welfare, family allowances, Veteran's Land Act administration, and handicrafts) and an Education Division.

1948 - Maj. D.M. MacKay appointed director of Indian Affairs Branch.

1949 - Indian Affairs Branch transferred to the Department of Citizenship and Immigration (13 Geo. VI Chap. 16). The administrative structure of the Branch remained virtually unchanged. A Construction and Engineering Service, however, was created.

4 September 1951	- New Indian Act passed (15 Geo. VI Chap. 29) after intensive study of the matter by a Special Joint Committee of the Senate and House of Commons, 1946-1948.
1953	- Lt.-Col. H.M. Jones appointed Director of Indian Affairs Branch.
1959	- The Welfare Division was split into the Economic Development Division (responsible for resource management, industrial and agricultural projects and placement services) and the Welfare Division (responsible for community development, family allowances, child welfare and rehabilitation).
1960	- A new administrative region was created, the District of Mackenzie, with headquarters at Fort Smith.
1962	- The Indian Affairs Branch was reorganized following a survey by the Civil Service Commission. The Branch's functions were regrouped under three major activities: Education (responsible for all educational facilities); Operations (responsible for the activities of the Economic Development Division, economic planning, trusts and annuities, reserve lands and resources, welfare, field administration and handicrafts); and Support Services (responsible for band councils, membership, estates, engineering and construction).
1963	- R.F. Battle appointed Director of Indian Affairs Branch.
1964	- R.F. Battle raised to level of Assistant Deputy Minister (Indian Affairs) in the Department of Citizenship and Immigration. The Federal-Provincial Ministerial Conference on Indian Affairs met at Ottawa 29-30 October. Recommended the setting up of eight Regional Indian Advisory Councils and a National Indian Advisory Board on which the regional councils were represented. These positions were to be filled by Indians. A major reorganization of the Branch was undertaken in order to give more authority and responsibility to officers in the field. Three new directorates were formed: the Development Directorate (responsible for establishing and coordinating social, industrial and resource development); the Education Directorate (responsible for establishing and carrying out educational policy); Administration Directorate (responsible for dealing with Indian lands and estates, membership, records management, field administration and the provision of a secretariat and support services).

1965 - Transfer of the Indian Affairs Branch to the Department of Northern Affairs and National Resources (P.C. 1965-2285).

1966 - The present Department of Indian Affairs and Northern Development (now also known as the Department of Indian and Northern Affairs) was established.

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PART ONE

The Pre-Confederation Period

Introduction

The relationship between non-Indian and Indian communities prior to Confederation developed in three successive stages with some inevitable overlap. First was the evolution of attitudes in which Indians were seen as a separate and special group which had to be dealt with in a certain way. Second was development of a policy to define and conduct the relationship between the two communities. Third came legislation to reflect both the social attitude towards Indians and the policy.

Indian policy began with military alliances which sought aid or neutrality from Indians in war, and their friendship in peace. This was for many years an entirely satisfactory policy, and created the precedent of the Crown treating directly with Indians in matters concerning their lands.

After the War of 1812 an influx of settlers led in part to the destruction of the subsistence base of Indian society. Moreover, emergence of provincial governments with goals often at odds with those of the Colonial Office, and an end to the need to maintain military preparedness in North America, caused a change in the direction of Indian policy. Total abandonment of Indians and abolition of the Indian Department was proposed. The alternative was to continue the Department but to redefine its goals. In accord with the social climate of the times, a philanthropic policy of redeeming Indians from 'savagery' and raising them to the 'level of civilization' of the dominant society followed. This continued until after Confederation.

Changes in policy accompanied and, to a large extent, were directed by changes in social attitude. By the end of the period, officers of the Department, members of Provincial Legislatures, and religious and philanthropic organizations adopted an almost fatherly obligation to those whom they quite often addressed as 'children'. Nowhere is this better typified than in the Civilization and Enfranchisement Acts. There was a genuine desire for Indians to assume full rights and responsibilities of citizens and a confidence in their ability to do so. There was also a genuine belief that protective legislation was justified by the benefits that it conferred.

Before 1850, Indian legislation had been incomplete, enacted piecemeal and virtually unenforceable. After 1850, two objectives emerged: 1) protection of Indians from destructive elements of "white" society until Christianity and education raised them to an acceptable level and 2) protection of Indian lands until Indian people were able to occupy and protect them in the same way as other citizens. To these ends, the 1850 Land Acts and the 1857 and 1859 Civilization and Enfranchisement Acts were carefully framed. Their main provisions, in intent if not always in letter, formed the foundation for subsequent Indian legislation after 1867.

The following three chapters deal with these themes in greater detail. To provide an historical context to events in Indian Affairs, each chapter, except the first, begins with a brief overview.

CHAPTER ONE

The Indian Department: 1755 - 1830

The genesis of the Indian Department can be traced back to late seventeenth century colonial America. As English colonists began to arrive in greater numbers, the importance of establishing a harmonious relationship with the Indian tribes became imperative. The small Plymouth Colony in New England had maintained successful informal dealings with the local Indians and there was certainly no indication that direct government intervention would eventually be required. The rapid influx of settlers after mid-century changed this situation.

In 1670 the British Parliament passed legislation which placed the conduct of Indian relations in the hands of the various colonial Governors:

> "Foreasmuch as most of our Colonies do border upon the Indians, and peace is not to be expected without the due observance and preservation of justice to them, you are in Our name to command all Governors that they at no time give any just provocation to any of the said Indians that are at peace with us ... do by all ways seek fairly to oblige them and ... employ some persons, to learn the language of them, and ... carefully protect and defend them from adversaries ... more especially take care that none of our own subjects, nor any of their servants do in any way harm them. And that if any shall dare offer any violence to them in persons, goods or possessions, the said Governors do severely punish the said injuries, agreeably to right and justice. As you are to consider how the Indians and slaves may be best instructed and invited to the Christian religion, it being both for the honour of the Crown and of the Protestant religion itself, that all persons within any of our territories, though never so remote, should be taught the knowledge of God and be made acquainted with the mysteries of salvation."[1]

Contained in this legislation and later Instructions to Governors were the main elements of future British Indian policy: a) protection of Indian people from unscrupulous settlers and traders, b) introduction of Christianity, later becoming the movement to "civilize" Indian people, and c) an "activist" role for the Crown as a protector of "Indians".

The 1670 legislation did not have immediate impact. However, in 1689, Arnout Veile was appointed as a special commissioner to the Five Nations residing

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in the area of New York. In 1696 the colonial government of New York appointed four commissioners to be responsible for the management of Indian Affairs. Their duties, however, were mainly to regulate the fur trade and suppress the liquor traffic.

In 1744, Governor George Clinton of New York appointed William Johnson as Chief Indian agent. For the next eighty-four years the Johnson Family, through Sir William (1755-1768), Guy (1768-1782), and Sir John (1782-1828), would exercise significant control over the direction of the Indian Department.

With outbreak of the Seven Years War in America it was essential that the British maintain its alliance with the Iroquois, and the Indian Department was placed on a more organized footing. In 1755, the Department was divided into a Northern and Southern Department. Sir William Johnson was placed in charge of the Northern, and John Stuart, the Southern. Both men were to report to the Commander of British Forces in North America.

In these formative years and, indeed until after the War of 1812, the direction of Indian policy was relatively straight forward - to maintain the various tribes as military allies. The related goals of protection and civilization were also pursued and underlay the proclamations aimed at protecting Indian "hunting grounds": Colonel Henry Bouquet's at Fort Pitt, 1761; Belcher's in May 1762; and the Royal Proclamation of 1763.

Formulated by the British Board of Trade and Plantations, the Proclamation of 7 October 1763 reserved the Indian "hunting grounds" of the interior for Indian use (see maps). Settlement purchases or grants, and licences for traders entering "Indian Country", were to be issued only with permission from the Crown:

> And whereas it is just and reasonable, and essential to our interest, and the security of our Colonies, that the several Nations or Tribes of Indians with whom we are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them or any of them as their Hunting Grounds ....

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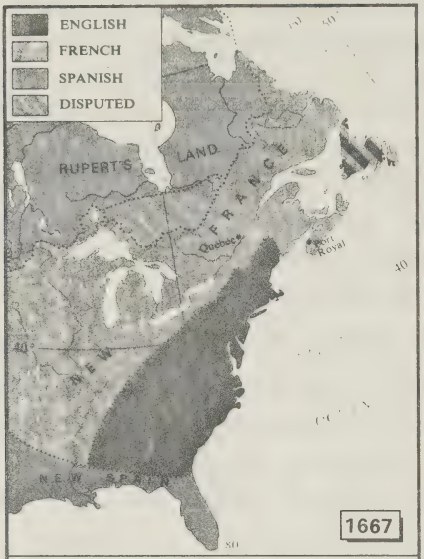
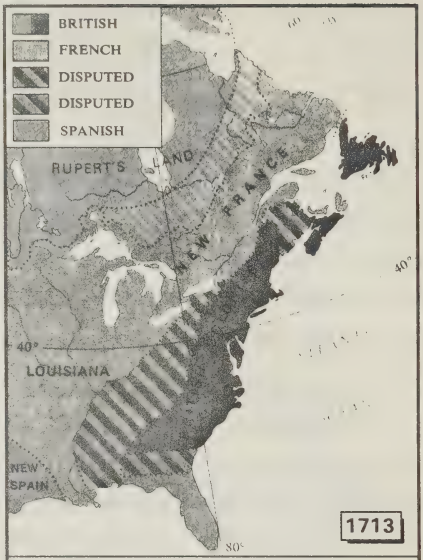


First successful French settlements in North America: Port Royal (1606), and Québec (1608). English settlement in Virginia begins (1606-07). French and English territorial claims overlap Acadia. Acadia is recognized as French possession by the Treaty of Breda (1667). A Royal Charter (1670) grants sole trading rights in Hudson Bay drainage basin to the Hudson's Bay Co.



By the Treaty of Utrecht, France cedes Nova Scotia (excluding Cape Breton Island) to Great Britain, relinquishes her interests in Newfoundland and recognizes British rights to Rupert's Land.

By the Treaty of Paris (1763), eastern North America becomes British territory except St-Pierre and Miquelon Islands (France). British colonial governments for Quebec, Newfoundland (with Île d'Anticosti and Îles de la Madeleine). Nova Scotia (including present-day N.B. and P.E.I.) Hudson's Bay Co. still administers Rupert's Land. Louisiana is ceded to Spain by France.

St. John's Island is separated from Nova Scotia (1769). The Quebec Act (1774) enlarges Quebec to include Labrador, Île d'Anticosti, Îles de la Madeleine, and Indian Country to the north and to the west and south to the Ohio and Mississippi rivers.

> ... We do further declare it to be our Royal Will and pleasure, for the present as aforesaid, to reserve under our Sovereignty, Protection and Dominion for the use of the said Indians, all the Land and Territories not included within the Limits of our Said Three New Governments, or within the Limits of the Territory granted to the Hudson's Bay Company, as also all the Lands and Territories lying to the Westward of the Sources of the Rivers which fall into the Sea from the West and North West as aforesaid;
>
> And we do hereby strictly forbid, on Pain of our displeasure, all our loving Subjects from making any Purchase or Settlements whatever, or taking possession of any of the Lands above reserved, without our especial leave and License for that Purpose first obtained.[2]

Perhaps the most important feature of the Royal Proclamation was that it specified a procedure for acquiring Indian "hunting grounds" for settlement. Thus early on the Crown assumed an active role as a protector of Indian people, particularly in matters involving land.

The Instructions issued to Governor James Murray in 1763 followed the general lines of those in 1670. Indian friendship and goodwill was to be pursued, Indians were to be given military protection, and when necessary, offered gifts and presents. Items 60-62 are worth quoting at length.

> 60. And whereas Our Province of Quebec is in part inhabited and possessed by several Nations and Tribes of Indians, with whom it is both necessary and expedient to cultivate and maintain a strict Friendship and good Correspondence, so that they may be induced by Degrees, not only to be good neighbours to Our Subjects, but likewise themselves to become good Subjects to Us. You are therefore, as soon as you conveniently can, to appoint a proper Person or Persons to assemble, and treat with the said Indians, promising and assuring them of Protection and Friendship on Our Part, and delivering them such Presents, as shall be sent to you for that purpose.
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> 61. And you are to inform yourself with the greatest Exactness of the Number, Nature and Disposition of the several Bodies or Tribes of Indians, of the manner of their lives, and the Rules and Constitutions, by which they are governed or regulated. And you are upon no account to molest or disturb them in the Possession of such Parts of the said Province, as they

at present occupy or possess; but to use the best means you can for conciliating their Affections and uniting them to Our Government, reporting to Us, by our Commissioners for Trade and Plantations, whatever Information you can collect with respect to these People, and the whole of your Proceedings with them.

62. Whereas We have, by Our Proclamation dated the seventh day of October in the Third Year of Our Reign, strictly forbidden, on pain of Our Displeasure, all Our Subjects from making any Purchases or Settlements whatever, or taking Possession of any of the lands reserved to the Several Nations of Indians, with whom We are connected, and who live under Our Protection, with Our especial leave for that Purpose first obtained; it is Our express Will and Pleasure, that you take the most effectual Care that our Royal Directions herein be punctually complied with, and that the Trade with such of the said Indians as depend upon your Government be carried on in the Manner, and under the Regulations prescribed in Our said Proclamation.[3]

Clearly, however, these Instructions were not explicit enough, for in 1775 the Instructions to Governor Carleton outlined an administrative structure and elaborated further on the principal policies. A hierarchy of Superintendents, Deputy Superintendents, Commissaries, Interpreters, and Missionaries was established with a clear set of duties and powers and a system of management. The essential points of the latter included:

14th That the said Agents or Superintendants shall by themselves or sufficient Deputies visit the several Posts or Tribes of Indians within their respective Districts once in every year or oftener as occasion shall require to enquire into and take an account of the conduct and behaviour of the subordinate officers at the said Posts and in the Country belonging to the said Tribes to hear appeals and redress all complaints of the Indians make the proper presents and transact all affairs relative to the said Indians.

15th That ... the said Agents or Superintendents as also the Commissaries at each Post and in the Country belonging to each Tribe, be empowered to act as Justices of the peace ...

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16th That ... the evidence of Indians under proper regulations and restrictions be admitted in all criminal as well as civil causes ...

17th That the said Agents and Superintendants have power to confer such honours and rewards on the Indians as shall be necessary and of granting Commissions to the principal Indians in their respective Districts, to be War Captains or Officers of other Military Distinctions.

18th That the Indians of each Town in every Tribe in the southern District, shall choose a beloved man, to be approved of by the Agent or Superintendant for such District, to take care of the mutual interests both of the Indians and Traders in such Town; and that such beloved men so elected and approved in the several Towns shall elect a Chief for the whole Tribe who shall constantly reside with the Commissary in the Country of each Tribe, or occasionally attend upon the said Agent or Superintendant as Guardian for the Indians and protector of their Rights with liberty to the said Chief to be present at all meetings and upon all hearings or trials relative to the Indians before the Agent or Superintendants or before the Commissaries and to give his opinion on all matters under consideration at such meetings or hearings.

19th That the like establishments to be made for the northern Districts as far as the nature of the civil constitution of the Indians in this District and the manner of administering their civil Affairs will admit.

23rd That for the better regulations of the Trade with the said Indians, conformable to their own requests and to prevent those Frauds and Abuses which have been so long and so loudly complained of in the manner of carrying on such Trade, all Trade with the Indians in each District be carried on under the Direction and Inspection of the Agents or Superintendants, and other subordinate Officers.

24th That all persons intending to trade with the Indians shall take out licences for that purpose under the hand and Seal of the Colony from which they intend to carry on such Trade ...

38th That no Trader shall sell or otherwise supply the Indians with Rum, or other spirituous liquors, swan shot or rifled barrelled guns.

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The United States of America gains independence from Britain by the Treaty of Paris (1783). U.S.A. boundaries are described from the Atlantic to Lake of the Woods. New Brunswick and Cape Breton Island are separated from Nova Scotia (1784).

Following the Constitutional Act, Quebec is divided into Upper and Lower Canada (1791). Spain cedes Louisiana back to France (1800). U.S.A. purchases Louisiana (1803).

St. John's Island (Île St-Jean) is renamed Prince Edward Island (1798). Île d'Anticosti and the coast of Labrador from the St-Jean River to Hudson Strait are transferred from Lower Canada to Newfoundland by the Labrador Act (1809).

The international boundary is extended westward along the 49th parallel to the Rocky Mountains (1818). The Oregon Territory is occupied jointly by Britain and U.S.A. Reannexation: Cape Breton Island to Nova Scotia (1820); Île d'Anticosti and part of the coast of Labrador to Lower Canada (1825). Agreement between Russia and Britain on the description of Alaska boundary (1825).

39th That in Trade with the Indians no credit shall be given them for goods in value beyond the sum of fifty shillings and no debt beyond that sum be recoverable by law or equity.

41st That no private person, Society Corporation or Colony be capable of acquiring any property in lands belonging to the Indians either by purchase of or grant or conveyance from the said Indians excepting only where the lands lye within the limits of any colony the soil of which has been vested in proprietors of corporations by grants from the Crown in which cases such proprietaries or corporations only shall be capable of acquiring such property by purchase or grant from the Indians.

42nd That proper measures be taken with the consent and concurrence of the Indians to ascertain and define the precise and exact boundary and limits of the lands which it may be proper to reserve to them and where no settlement whatever shall be allowed.

43rd That no purchases of lands belonging to the Indians whether in the name and for the use of the Crown or in the name and for the use of proprietaries of Colonies be made but at some general meeting at which the principal Chiefs of each Tribe claiming a property in such lands are present....[4]

The context in which these Instructions were issued to some extent explains their detail. The previous year (1774) had seen increasing unrest among eastern tribes, caused by friction between the American colonies and the Imperial Government. The revolutionaries had approached the Indians to obtain, if not their assistance, at least their neutrality in the coming struggle. The Imperial Government sought to keep the Indians as allies through these Instructions.

In effect, the Instructions of 1775 tried to achieve the aims of the Proclamation of 1763, the 'Pain of His Majesty's displeasure' having failed as a sufficient threat to keep the colonists out of Indian "hunting grounds". However, by empowering the Superintendent to 'transact all affairs relative to Indians', the Imperial government left little room for later action by the colonial legislatures, particularly in the Canadas after 1791. Consequently, Indian legislation for many years afterwards was confined to single, special-purpose statutes regarding liquor and trade.

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Despite the contribution of Indian allies to the British cause, Indians were not mentioned in the Treaty of Paris (1783) at the end of the Revolutionary War. It was left to Sir John Johnson, appointed Inspector-General of Indian Affairs on 14 March 1782, to arrange compensation for those Indians who had remained loyal. This compensation had to be settled, not in the Thirteen Colonies, but in the Colony of Quebec north of the St. Lawrence River.

Working out of Quebec City, Sir John Johnson relied on former British army officers as local Indian agents. Indeed Daniel and William Claus, Colonel Alexander McKee and Mathew Elliott became important field agents and their actions often set the policy and tone of relations with local tribes. In this period communications were poor, Quebec City remote as it was and Whitehall across the Atlantic. Indian policy and tactics had to be relatively ad-hoc, because central control was virtually non-existent.

Complaints about abuses and nepotism emanated soon from both Indians and non-Indians. Dissension and individual rivalries among officials was common. The situation prompted Lieutenant-Governor John Graves Simcoe to complain to Lord Dorchester on 9 March 1795:

> The Members of the Legislature therefore, as well as the People of the Province will not see with secret satisfaction and confidence the lives and properties of themselves and of their families at this momentous period, dependent on the discretionary conduct of the Indian Department. The legislature also, can alone prevent improper Encroachments being made upon the lands of the Indians. It can alone regulate the Traders and prevent their Vices from being materially injurious to the Welfare of the Province; and it will in all probability exert its authority, as seems most just, to effect these popular objects. The legislature alone, can give due efficiency to those general principles of Policy which his Majesty shall think proper to adopt in respect to the Indians, and which the Lieutenant Governor or Person administering the Government of Upper Canada, the Confidential Servant of the Crown in the Province, can alone carry into execution with safety, Vigilance and promptitude.[5]

As a result, control of the Indian Department in Upper Canada was placed under the Lieutenant-Governor. In Lower Canada, the Commander-in-Chief was in charge.

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With the Indian Department under military control, policy was directed almost exclusively towards maintenance of Indians as allies. Little was done to ease relations between Indians and settlers.

> Officers were appointed at the principal Indian settlements, to enforce these laws, and to communicate between the tribes and the Government; to attend to the distribution of their presents and annuities; to prevent dissension; and generally to maintain the authority of the Government among the tribes.
>
> Little was done by the Government to raise their mental and moral condition. In Lower Canada, the Roman Catholic Missionaries, originally appointed by the Jesuits, were maintained. In Upper Canada, until a very late period, neither Missionary nor School-master was appointed. The omission was in later years supplied by various religious Societies whose efforts have in many instances met with signal success, and within a still more recent period, the Government has directed its attention to the same subject.
>
> As the Indian Lands were held in common, and the title to them was vested in the Crown, as their Guardian, the Indians were excluded from all political rights, the tenure of which depended upon an extent of interest not conferred upon them by the Crown. Their inability also to compete with their white brethren debarred them, in a great measure, from the enjoyment of civil rights, while the policy of the Government led to the belief that they did not in fact possess them.[6]

When the Indian Department was established in 1755 it was considered to be an operational arm of the military. The Superintendent-General simply reported to the Commander-in-Chief of British Forces. However, in 1795, this reporting structure changed and the head of the Department reported to the Lieutenant-Governor, a civil official. This arrangement was tenuous in practice.

On 15 January 1799 the Deputy Superintendent-General, Colonel Alexander McKee, died. The Lieutenant-Governor of Upper Canada named Captain William Claus to the post. At the same time, however, the Duke of Kent, Commander-in-Chief of British Forces in North America, named Colonel John Connolly to succeed McKee. After much discussion, Claus was confirmed and promoted to Colonel. Civil authority won the battle and now had effective control of the Indian Department. This arrangement remained in effect until after the War of 1812.

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Apparently difficulties in maintaining Indian allegiance prompted return of the Indian Department to military control in 1816. This continued until 1830 when the Indian Department was divided into two offices. In Upper Canada the Lieutenant-Governor exercised control, while in Lower Canada the Military Secretary, Lieutenant-Colonel D.C. Napier, took charge as Secretary for Indian Affairs.

It is ironic that the Indian Department returned to military control just when the importance of Indian people as military allies was declining. The Treaty of Ghent (1814) ended the War of 1812 and ushered in a new "era of good feelings" between Great Britain and the United States. With the traditional military role of Indians gone, other aspects of British Indian policy such as civilization and protection became more prominent.

The transition in policy accompanied a change-over in key personnel. Col. William Claus, the Deputy Superintendent-General, died in November 1826 and Sir Johnson retired as Superintendent and Inspector-General on 25 June 1828. Passage of time, departure of senior administrators, and relaxation of international tensions provided an opportunity for fresh thinking and a general overhaul of the Indian Department. Major-General H.C. Darling served as Chief Superintendent until 1830 when civil control was re-instituted and a thorough reorganization of the Department completed.

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CHAPTER TWO

Indian "Civilization" Experiments and Commissions of Inquiry: 1830-1850

The 1830's and '40's saw a continuation of the "era of good feelings" between Great Britain and the United States. However, the British North American colonies, although they prospered economically, were increasingly beset with internal unrest. Open rebellion in 1837 in both Upper and Lower Canada prompted a report by Lord Durham on the political future of the two Canadas. As a result of his findings both provinces were united by the Act of Union (1840) to form the Province of Canada.

With the decline in international tensions the traditional role of Indians as military allies changed. Numerous commissions of inquiry into the Indian Department's set-up indicated more than a passing interest in the future of Indian people by public officials.

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Few pieces of legislation were passed during the 1830's specifically directed towards improving Indian conditions. Indeed, the pessimistic views of Governor Sydenham and Lieutenant-Governor Bond Head seemed to dampen any enthusiasm for positive legislative action. The "Indian question" was rapidly becoming a matter for "further study".

In 1839 Governor-General Charles Poulett Thompson commissioned Robert S. Jameson, J.B. Macaulay, and William Hepburn to investigate the Indian Department's organization and policies.[1] The Commissioners reported back in 1840 but their extensive findings appear to have had little impact. Interestingly enough, the Act of Union (3-4 Victoria, Chapter 35) made no provision for the Indian Department on the Civil List nor budgeted for the payment of annuities in Upper Canada Indian treaties.[2] Without money or official recognition the Indian Department could not be expected to view the Macaulay report with any seriousness. It was obvious that another inquiry would soon follow.

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In 1844 the Bagot Commission reported on the Department and Indian conditions. Evidence given by missionaries, Indian agents and superintendents revealed many ideas about the future of Indians. Testimony by Assistant Superintendent J.W. Keating reported a dismal situation of some bands.

> They are generally intemperate, and although painful experience has taught them the folly of their conduct, which they have frequently acknowledged to me, they cannot resist the temptation, and will part with everything for ardent spirits, when once they taste them. Their generosity is unbounded, and indeed carried to excess; in times of need all is divided, but there is, alas, no thought for the morrow, no provision made for the dark day. They are exceedingly fond of liberty, and hate the slightest restraint upon their motions. They have no idea of regularity or system, and in all, obey the impulse of the moment; though apparently indolent, they are capable of the greatest exertion when aroused to them by want, and perform marches in a day of astonishing length. They are exceedingly superstitious, and conjurors possess over them an unlimited sway; they conciliate them by presents, and strip themselves almost of all to ensure their good offices, in the restoration of health of the sick, or the success of the hunt.
>
> Those men, by tricks and juggling, similar to that of the heathen priests of former days, inspire their deluded votaries with unlimited confidence, and of course strive to prevent any change in their mode of life or religion, well aware that with it their power must cease. The fear of exciting their ire, the dreadful consequences with which they threaten those who disobey them, the promises of future bliss in the happy hunting grounds which they lavishly make, all combine to mould the Indian in their will, and form the chief obstacle in the path of the Missionary. Most men are also closely attached to the habits and institutions of their forefathers, and have a natural and almost praiseworthy aversion to change them, and these medicine men are the real barrier to improvement. Educating the children, and placing them among already settled and civilized Indians, who pay regular attention to farming, would be the readiest mode of bringing the heathens to the right way.
>
> ... Let the Village of the Ottawas at Manitowaning be my example. It contains at least sixty neat log houses, whitewashed within and without, erected by the Indians themselves; a good Church also built by them, and stands in the midst of several hundred acres of land under flourishing condition.

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> ... Reverse the picture, and visit a neighbouring settlement of heathens; there, though the land be equally fertile, women alone are seen in the field attending to the scanty crops, which in the intervals of dissipation have been put in; some of the men are hunting, some idly stretched before their miserable camps, smoking and eagerly awaiting the return of the messenger gone to the neighbouring trader for *"fire water"*. He arrives, they flock together and then commences the scene of dissipation and drunkenness; all labour is forsaken, the wailing infant neglected, and men and women drunk *"à l'écria l'un de l'autre,"* battles commenced, the night is spent in debauch, which, if the store be not exhausted, continues until it is. When over-feverish and sickened, they can hardly crawl about in search of food, and thus to the pains of intoxication are added the pangs of hunger. Such scenes are of frequent occurrence, despite all the precautions taken to prevent the sale of ardent spirits.[3]

Descriptions like this tended to reinforce views against the immediate possibility of "civilizing" the Indian population.

Earlier, in 1836, Lieutenant-Governor Bond Head considered it a near hopeless task to attempt to "advance" and assimilate Indian people:

> 1. That an Attempt to make Farmers of the Red Men has been generally speaking a complete failure.
>
> 2. Congregating them for the purpose of civilization has implanted many more vices than it has eradicated and consequently,
>
> 3. The greatest Kindness we can perform towards these Intelligent, simple-minded people is to remove and fortify them as much as possible from all Communication with the Whites.[4]

He felt that Indian people were doomed and he looked to Manitoulin Island as a refuge where they could live out their "twilight years."

The Colonial Secretary, Lord Glenelg and members of the Indian Department, the Aborigines Protection Society and Wesleyan Missionary Society, disagreed with the Lieutenant-Governor's predictions.[5] They could not reach a consensus on the best way to help Indians, but regarded them for the most part, as no less then "noble savages".[6] These officials and humanitarian organizations believed that Indians could be saved from the fate foreseen by Bond Head in 1836.

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Despite small successes which resulted from the efforts of humanitarian groups, views similar to Bond Head's continued. In 1841 Lord Sydenham, Governor-General, criticized those who tried to intermingle the two races:

> The attempt to combine a system of pupilage with the settlement of these people in civilized parts of the country, leads only to embarrassment to the Government, expense to the Crown, a waste of resources of the province, and injury to the Indians themselves. Thus circumscribed, the Indian loses all the good qualities of his wild state, and acquires nothing but the bias of civilization. He does not become a good settler, he does not become an agriculturalist or a mechanic. He does become a drunkard, and a debaucher and his females and family follow the same course. He occupies valuable land, unprofitably to himself and injurious to the country. He gives infinite trouble to the Government and adds nothing either to the wealth, the industry, or the defense of the Province.[7]

The Commissioners appointed by Governor-General Sir Charles Bagot in 1842, were more temperate in their views and recommendations. Messrs. Rawson, Davidson and Hepburn realized that Indians could no longer pursue a self-supporting, hunter-trapper's existence amid advancing "white" settlement. In order to survive, Indians had to become "agriculturalists" or "mechanics" and quickly adapt to rapidly changing demographic patterns. The Commission believed that abolition of the office of Chief Superintendent and designation of the Civil Secretary as Superintendent-General of Indian Affairs would create a more efficient Indian administration.[8]

Protection and cultural advancement of Indians, coupled with their closer contact with settlers, were additional problems for the Indian Department. Laws were required to prohibit "whites" from occupying or destroying Indian villages, from squatting on their lands and from selling liquor to them.[9] However, few colonists considered immediate civilization of Indians as a priority.[10]

There were two conflicting approaches to the "civilization" process. One was that native people should be placed among settlers of good reputation to learn proper behaviour and social graces. Another belief was that, only by isolating Indians on reserves, could the resident school teacher, agent and missionary achieve success in preparing Indians for integration.

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Reverend James Coleman testified before the Bagot Commission that both of these schemes would transform traditional Indian culture and way of life:

> It has passed into a proverb, that a fisher seldom thrives, a shooter never, and that a huntsman dies a jovial begger. How then is it to be expected that the Indians, who can have no motive to a settled and laborious agricultural life, but the persuasions of the Missionary and Superintendent, will, in favorable situations for success, relinquish his former employments of hunting and fishing, for those which are less profitable to him, and attended with, to him, much greater fatigue.
>
> ... It is necessary the Indian youth should be prevented becoming hunters or fishers, and this can be alone done by locating the village where there are no facilities for either.[11]

Under Captain Thomas G. Anderson in 1830, the Indian Department undertook an experiment in "civilizing" the Indians at Coldwater on The Narrows reserve on the northwest of Lake Simcoe. This project tried to integrate the Indians through constant interaction with local settlers. However, it failed because of chronic lack of funds, slow pace of departmental action, inexperienced personnel and rivalry between religious groups on the reserve.[12] Unfortunately, the failure of this venture only encouraged the negative sentiments of Bond Head and Sydenham.

The failure of Bond Head's Manitoulin project (1836) added to the pessimism towards Departmental attempts to isolate Indians. Expectation of rapid results was the chief weakness of the Manitoulin experiment, but problems were similar to those experienced at Coldwater.[13]

The Bagot Commission also suggested changes concerning Departmental administration, Indian lands, annuities, presents, and services on Indian reserves.[14] In general,

> That as long as the Indian Tribes continue to require the special protection and guidance of the Government, they should remain under the immediate control of the Representative of the Crown within the Province, and not under the Provincial Authorities.[15]

With respect to management of Indian lands, the Commissioners made explicit that "title to public lands" in Canada was vested in the Crown. They conceded that the Crown had allowed Indians the right of occupancy and compensation for surrender or purchase of these lands. From the mid-eighteenth century the Crown

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had negotiated Indian land cession treaties in Upper Canada. Although there had never been a similar pattern in Quebec nor the Maritimes, the Commission found one instance along the Ottawa River in Lower Canada where "the Indians [were] dispossessed of their ancient hunting grounds without compensation."[16]

The Bagot Commission also documented a case in 1837 during which both Peter Jones, a missionary among the Mississaugas of the Credit, and Lord Glenelg, the British Colonial Secretary, questioned the land surrender system and Indian "tenure".[17] The Mississaugas had wanted "to obtain from Her Most Gracious Majesty, the Queen, a written assurance or Title Deed, securing to them ... forever" their rights to land in which they had already made improvements.[18] Their position was backed by the Wesleyan missionaries. Even Glenelg thought that deeds should be granted.[19] However, the Commissioner of Crown Lands was not the appropriate office for recording land patents and Chief Superintendent-General Samuel Jarvis opposed the move.[20]

He contended that if land title was transferred from the Crown to the Indians, the latter would become liable for assessments, debts and other legal or financial burdens.[21] According to Jarvis,

> 1st. If alienable Titles should not be given to any one [Indian], it would be difficult to avoid the necessity of conferring them on all. The majority are decidedly unfit to receive them, and would most clearly comprehend the propriety of their being withheld, or of a distinction being made.
>
> 2nd. Those who are not competent to receive Titles might entertain a desire to dispose of them and how provident however they may be, they may become subject to prosecution. I cannot see in such a case how the advantages expected to be imparted to the less civilized, by keeping them from too great proximity with white men can be secured, for thus white men might enter upon these lands, and no power whatever, in such case, could remove them.
>
> ... The only plan which appears to me predictable is, to give to the most deserving, as a rewarding for industry, license of occupation in perpetuity to them and their children, but not transferable to white man, which, retaining the Fee in the Crown, would protect them from alienation, and I think satisfy fully the desire of the Indians themselves.[22]

In view of Jarvis' contentions and other evidence, the Commissioners suggested on 22 January 1844, improvements in the administration of Indian lands:

1. That all Title Deeds for Indian Lands should be recorded in the office of the Provincial registrar, and be open as any other public documents to inspection.

2. That where no Title Deeds exist, they should be supplied and recorded in the same manner.

3. That these Title Deeds, so recorded should be considered by the Government as equally binding with any other similar document, and should preclude all power of resumption, without the consent of the Indians concerned.

4. That when the reserve has not been surveyed, or any doubt exist as to its proper limits, steps should be forthwith taken to supply the information, which ought to be kept in the Indian Office for inspection with diagrams of the reserves. [This] measure ... will facilitate the endeavours of the Government to prevent intrusion upon the Indian lands.

5. That the several tribes be encouraged to divide their reserves among themselves, and to appropriate a portion, not exceeding 100 acres, to each family or member, surrendering to the Government the remainder in trust to be sold for their benefit.

6. That in all instances of such division, or of individual members of a tribe adopting a fixed location with the consent of the tribe, a limited title deed be granted - securing to the holder and his heirs the possession of such separate portion of the reserve, with the power of transferring or divising the same, to any member of his family or of his tribe, but not to a white man, and protecting him in its possession in the event of any surrender of the reserve by the rest. That upon the issue of such a deed a gratuity in Agricultural Implements, Stock, Furniture, or other useful articles, be given in commutation of all further claim to presents.

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7. That the Government should be prepared to entertain any application for the exchange or sale of these Licences in favour of any Indian belonging to another Tribe, but not in favour of a white.

8. That upon a Report from an Officer of the Department that an Indian is qualified by education, knowledge of the arts and customs of civilized life and habits of industry and prudence, to protect his own interests, and to maintain himself as an independent member of the general community, the Government shall be prepared to grant him a Patent for the Land in his actual cultivation or occupation, and for as much more as he may be entitled to upon an equitable division of the reserve of his Tribe, not exceeding in any instance 200 acres. That upon the issue of this Patent all further claims to share in any annuity or other property of the Tribe be retained.[23]

The Commissioners believed that it was desirable to remove Indians from a state of tutelage as soon as they could take care of themselves, and that the privileges of citizenship would attract and stimulate greater effort among Indians.

To enable Indians legally to secure their property against encroachment and fraud, the Crown assumed the role of guardian. Under the Crown Lands Protection Act of 1839 (2 Victoria, chapter 15), "trespassers" included all unauthorized persons on reserve lands in Upper Canada.[24]

Indian reserves in Upper Canada included some of the Province's most valuable tracts. Close surveillance by the Crown for encroachment by squatters, illegal cutting of timber, and poaching, became increasingly difficult during the 1840's.[25] The Macaulay Commission of 1840 proposed that squatters be classified into two groups, that "objectionable occupants" be allowed to pre-empt, at a price "fixed by the Government", the plots they had improved.[26]

A few years later, the Bagot Commission suggested that a lawful, lucrative trade could emerge through Crown Lands Agents issuing permits or licenses to cut timber on Indian reserves.[27] The Indian Fund, held in trust for Indians, would benefit tremendously.

The Bagot Commission also recommended that Government's distribution of annual gifts or presents to Indians be gradually discontinued. Lord Glenelg

had rationalized retention of this practice in 1836:

> It is sufficient to observe that the custom has now existed through a long series of years that even in the absence of any original obligation a prescriptive title has been thus created; that this title has been practically admitted by all who have been officially cognizant of the matter, and that all agree in stating that its sudden abrogation would lead to great discontent among the Indians, and perhaps to consequences of a very serious nature.[28]

Glenelg, however, did feel that this practice ought not to be continued indefinitely.

Captain Anderson contended for different reasons that the custom of giving presents to Indians should be maintained. He argued that its absence would

> heap misery on wretchedness, but ere long, deprive them of existence. They have no annuity as a resource, the game is almost entirely destroyed; they have scarcely any furs to offer the Traders ... and they gain only a precarious subsistence by fishing, trapping hares, and shooting a few wild fowl. It is therefore undeniable that, if the Indian thus situated is deprived for one or two years of even his blanket ..., he cannot face the storm to procure fish, and he will consequently perish.[29]

Anderson felt however that as Indians became progressively more civilized and educated, the expense of supplying presents would diminish and eventually disappear.

The Commission's recommendations on services to Indians showed a concern for the future generation:

1. That measures should be adopted to introduce and confirm Christianity among all the Indians within the Province, and to establish them in settlements.

2. That the efforts of the Government should be directed to educating the young, and to weaning those advanced in life from their feelings and habits of dependence.

3. That for this purpose Schools should be established and Missionaries and Teachers be supported at each settlement, and that their efficiency should be carefully watched over.

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4. That in addition to Common Schools, as many Manual Labour or Industrial Schools should be established, as the funds applicable to such a purpose will admit.

5. That the cooperation of the various religious societies, whose exertions have already proved very beneficial among the Indians, should be invited in carrying out the measures of the Government, particularly among the tribes which did not belong to the Church of England. The Secretary of State, Sir George Murray, has expressly discouraged the limitation of the channels through which the blessings of civilization should flow among Indians. The Government of the United States has experienced much advantage from this assistance in the establishment of the Missouri Conference School.

6. That steps should be taken to establish Schools among the Indians of Lower Canada, and to avert that opposition, on the part of the Missionaries, which has hitherto prevented their successful operation in that part of the Province.

7. That every practicable measure be adopted to familiarize the adult Indians with the management of property, with the outlay of money, and with the exercise of such offices among themselves as they are qualified to fill, such as rangers, pathmasters, and other offices, for ordinary township purposes. Several proposals to this effect will presently be submitted, in connection with their Lands and Annuities.

8. That the Indian be employed, as far as possible, in the erection of buildings, and in the performance of their services for their own benefit, and that, with the same view, the employment of dissipated or ill-conducted contractors or workmen among them be not permitted. It has been a matter of complaint that contractors have introduced drunken workmen, and exhibited a pernicious example among them.

9. That institutions calculated to promote economy, such as Savings Banks, be established among them.[30]

As the 1840's drew to a close there seemed to be optimism and a plan of action for helping Indian people. Whether it could or would be implemented was a matter which would require time.

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CHAPTER THREE

Indian Protection and Civilization Legislation: 1850-1867

Between 1850 and 1867 events in the Province of Canada were highlighted by commercial expansion, political deadlock and colonial defence. The Reciprocity Treaty (1854) with the United States enabled the Province of Canada to increase its natural products exports to the large American market. Railway expansion and immigration accelerated economic activity, but the political deadlock between Canada East and Canada West in the late 1850's indicated a need for some new political settlement. Against this backdrop, the American Civil War (1861-1865) and a victorious Northern Army threatened the British colonies. Subsequent conferences at Charlottetown (Sept. 1864), Quebec (Oct. 1864) and London (1866) led to Confederation one year later.

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Prior to 1850 there had been no legislation to protect Indian lands per se from trespass and imposition. An Upper Canada statute of 1839 (2 Victoria, chapter 15) had classified Indian lands as "Crown lands" for protecting against trespass and damage. Other measures having to do with trespass were in Acts and Ordinances concerning sale of liquor to Indians, the earliest having been issued in 1764 by Governor James Murray.

Continuing depredations and the Bagot Commission's recommendations generated passage of two Acts on 10 August 1850, "An Act for the better protection of the Lands and Property of the Indians in Lower Canada" and, "An Act for the protection of the Indians in Upper Canada from imposition, and the property occupied or enjoyed by them from trespass and injury".[1] The former vested all Indian land and property in Lower Canada in a Commissioner of Indian Lands. The Commissioner could exercise and defend all rights pertaining to the landowner, and had full power to lease lands and collect rents. A noteworthy provision was the definition of an "Indian":

> First - All persons of Indian blood, reputed to belong to the particular Body or Tribe of Indians interested in such lands and their descendents.

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> Secondly - All persons intermarried with any such Indians and residing amongst them, and the descendents of all such persons.
>
> Thirdly - All persons residing among such Indians, whose parents on either side were or are Indians of such Body or Tribe, or entitled to be considered as such: And
>
> Fourthly - All persons adopted in infancy by any such Indians, and residing in the village or upon the lands of such Tribe or Body of Indians and their Descendents.[2]

This definition set a precedent for later legislation.

The Indian Protection Act in Upper Canada permitted no conveyance of Indian Land without Crown consent nor collection of debts from an Indian not possessed of real estate in fee simple, assessed at least at twenty-five pounds (Sterling). It also provided that taxes would not be levied on Indians or persons intermarried with Indians for or in respect of Indian lands.[3] Indian people living on reserves had to perform statutory labour on roads passing through their reserves, although the work required of Indians was not to exceed in amount or extent that demanded from other inhabitants of the Province.[4]

The Upper Canada legislation set down the Indian Department's approach for protection of Indian rights and possessions, as well as for their eventual cultural advancement. It prohibited pawning or exchange of goods by Indians for liquor, and provided for protection of Indian property derived from presents and annuities. For the most part, the Upper Canada Indian Protection Act of 1850 consolidated the views, policies and legislation put forward from the time of Governors Murray, Kempt and Colborne.

This statute also elaborated on the Indian lands clause in the Crown Lands Protection Act of 1839 and included many of the Bagot Commission's recommendations concerning removal of timber from Indian reserves. Crown Land Commissioners could grant licenses for cutting timber on Indian lands and apply fines against trespassers or persons not complying with the regulations.[5] All penalties were to be paid to Her Majesty for the use and benefit of the Indians.

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The Upper Canada Indian Protection Act also proposed that the Commissioners and the Indian Superintendent be appointed as Justices of the Peace to enforce the act's provisions.[6] The Act stated what individuals would not be considered as trespassers on Indian reserves:

> That it shall not be lawful for any person or persons other than Indians and those who may be intermarried with Indians, to settle, reside upon or occupy any lands or roads or allowances for roads running through any lands belonging to or occupied by any portion or Tribe of Indians within Upper Canada ....[7]

This Act did more than its counterpart in Lower Canada to secure Indian land from "white" encroachment because it was also designed to protect the lands of men and women intermarried and living with Indians.

The definition of an "Indian" in the Act of 1850 for Lower Canada was controversial. On 30 August 1851 another statute (14-15 Victoria, chapter 59) amended the particular section to read:

> II. And be it declared and enacted, that for the purpose of determining what persons are entitled to hold, use or enjoy the lands and other immoveable property belonging to or appropriated to the use of the various Tribes or Bodies of Indians in Lower Canada, the following persons and classes of persons, and none other, shall be considered as Indians belonging to the Tribe or Body of Indians interested in any such lands or immoveable property:
>
> Firstly. All persons of Indian blood, reputed to belong to the particular Tribe or Body of Indians interested in such land or immoveable property, and their descendants:
>
> Secondly. All persons residing among such Indians whose persons were or are, or either of them was or is, descended on either side from Indians, or an Indian reputed to belong to the particular Tribe or Body of Indians interested in such lands or immoveable property, and the descendants of all such persons: And,
>
> Thirdly. All women, now or hereafter to be lawfully married to any of the persons included in the several classes hereinbefore designated, the children issued of such marriages, and their descendants.[8]

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Thus the 1851 amendment indirectly excluded "whites" from living among Indians, and non-Indian males married to Indian women, from legal status as "Indians". This provision was one of the first to differentiate between "status" and "non-status" Indians.

From 1850 through 1853 the Indian Department received petitions from "whites" and Métis or half-breeds who claimed rights to land on or around Indian reserves. Most complaints concerned insufficient compensation for property improvements. Similar disputes arose over the pre-emption rights of railroads. In this regard, the twenty-second clause of the Act of 1851 to consolidate and regulate the General Clauses relating to Railways (14-15 Victoria, chapter 51), protected Indian lands in the Province of Canada from damages without compensation by railway companies.[9] On the other hand, a settler's petition in 1853 to the Governor-General concerning land disputes at the Grand River noted that an Order-in-Council of 27 November 1840 had granted certain pre-emption rights to "white" occupants of Indian land prior to the land surrender of 18 January 1841. The settlers who were now expelled by Crown Commissioners under the Upper Canada Protection Bill of 1850 claimed that their removal required proper compensation.[10]

Government still believed that a settled existence was desirable for advancement of Indian people. A second Act (14-15 Victoria, chapter 106) on 30 August 1851 set apart two hundred and thirty thousand acres for Indians in Lower Canada.[11] The Act vested these tracts in the Province's Commissioner of Indian Lands. The Superintendent-General could distribute yearly to the Indians a sum not exceeding one thousand pounds currency from the Consolidated Revenue Fund.[12] This may have evolved from the unsuccessful effort in 1847 to incorporate the tribes in Lower Canada.[13]

On 10 June 1857 an Act for the Gradual Civilization of the Indian Tribes in the Canadas (20 Victoria, chapter 6) contained a preamble that the government favoured integration of Indians more than additional exclusive laws:

> Whereas it is desirable to encourage the progress of Civilization among the Indian Tribes in this Province, and the gradual removal of all legal distinctions between them and her Majesty's other Canadian Subjects, and to facilitate the acquisition of property and of the rights accompanying it, by such individual Members of the said Tribes as shall be found to desire such encouragement and to have deserved it...[14]

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Clauses III and IV used the "Indian" definition in the Lower Canada Indian Protection Act of 1850 to determine the suitability of individuals for enfranchisement:

> III. The Visiting Superintendent of each Tribe of Indians for the time being, the Missionary to such Tribe for the time being, and such other person as the Governor shall appoint from time to time for that purpose, shall be Commissioners for examining Indians, being members of such Tribe, who may desire to avail themselves of this Act, and for making due inquiries concerning them: and such Commissioners shall meet for the said purpose at such places and times as the Superintendent General of Indian affairs shall from time to time direct, and shall have full power to make such examination and inquiry: and if such Commissioners shall report in writing to the Governor that any such Indian of the male sex, and not under twenty-one years of age, is able to speak, read and write either the english or the french language readily and well, and is sufficiently advanced in the elementary branches of education and is of good moral character and free from debt, then it shall be competent to the Governor to cause notice to be given in the Official Gazette of this Province, that such Indian is enfranchised under this Act; Act aforesaid, [13-14 Victoria, chapter 74] and all other enactments making any distinction between the legal rights and abilities of Indians and those of Her Majesty's other subjects, shall cease to apply to any Indian so declared to be enfranchised, who shall no longer be deemed an Indian within the meaning thereof.
>
> IV. The said Commissioners may also examine and inquire concerning any male Indian over twenty-one and not over forty years of age, desirous of availing themself of this Act, although he be not able to read and write or instructed in the usual branches of school education; and if they shall find him able to speak readily either the English or the French language, of sober and industrious habits, free from debt and sufficiently intelligent to be capable of managing his own affairs, they shall report accordingly in writing to the Governor; and if such report be approved by the Governor as to the Indian, he shall be virtue of such approval be in a state of probation during three years from the date of the report, and if at the end of that term the Commissioners shall again report in writing to the Governor that such Indian has during such term conducted himself to their satisfaction, then it shall be competent to the Governor to cause notice to be given in the Official Gazette that such Indian is enfranchised under this Act, and he shall thereupon be so enfranchised.[15]

Clause VI imposed a penalty of up to six months imprisonment for any Indian who falsely represented himself as enfranchised.[16] Thus, the Department viewed enfranchisement as an honour for many Indians.

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Clause VII of the Gradual Civilization Act of 1857 contained property and monetary inducements to encourage Indians to leave tribal societies and seek enfranchisement. The Superintendent-General could allot to every enfranchised Indian fee simple title up to fifty acres of reserve land and a sum of money equal to the principal of the annuities and other yearly revenues received by the tribe. The suggestion was that enfranchisement was a reward for adopting the lifestyle and customs of "civilized" citizens.

On 8 September 1856 Messrs. Froome Talfourd, Thomas Worthington and Superintendent-General R.T. Pennefather were appointed Special Commissioners to investigate the failure of the various Indian experiments, the slow progress towards policy goals of a generation before, and public discontent with Indian conditions. They were instructed to report upon two points:

> 1st As to the best means of securing the future progress and civilization of the Indian Tribes in Canada.
>
> 2nd As to the best mode of so managing the Indian property as to secure its full benefit to the Indians, without impeding the settlement of the country.[17]

In 1858 they remarked on the Imperial Government's Indian policy:

> The position in which the Imperial Government stands with regard to the Indians of Canada, has changed very materially within the last fifteen years. The alteration,however, is rather the working out of a system of policy previously determined on, than any adoption of new views on the part of the English Cabinet.
>
> As the object of this system was gradually to wean the Indians from perpetual dependence upon the Crown, successive years show an increasing loosening of the ties to which the Aborigines clung. Many of the officers appointed to watch over their interests were removed, vacancies were not filled up, the annual presents were first commuted, and subsequently withdrawn and the Indian Department is being gradually left to its own resources.[18]

The Commissioners described Indian conditions in 1858 and observed that the Manitoulin Island experiment was "practically a failure". Nevertheless, they remained optimistic about eventual civilization and assimilation of Indians and the end of the Indian Department.

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> The claims of the Indians in respect to their former territorial possessions have been justly said, to be properly resolved at the present day into an equitable right to be compensated for the loss of the land from which in former times they derived their subsistence, and which may have been taken by Government for the purpose of settlement. It has also been argued with truth that the measure of such compensation should be to place and maintain them in a condition of at least equal advantage with that which they would have enjoyed in their former state. But the aborigines have other stronger claims on the Government than those which would be compensated by payment for their land. The years, which have passed, during which so little was done for their religious, intellectual and social improvement, have seen many generations perish; but the youth of the present day are still susceptible of instruction, and we think should not be forgotten.
>
> . . . . . .
>
> The attentive eye will observe a progress, slow it is true, but not the less steady towards improvement: They have all a greater or lesser appreciation of the blessings of civilization, and even those who prefer for themselves the wild freedom of a savage life, are anxious that their children should be educated like the white man. There is a growing desire for a settled interest in their land, and confirmed titles to their respective clearings are beginning to be sought for.
>
> We consider that it may fairly be assumed to be established that there is no inherent defect in the organization of the Indians, which disqualifies them from being reclaimed from their savage state.[19]

The Commissioners then remarked on the different settlement schemes:

> While as a general rule we believe the "separatist" system to be inadvisable in the settled districts of Canada, we are of the opinion that it might be beneficially carried out in the wild districts bordering on Lakes Huron and Superior. Nature has provided a refuge for the wandering Tribes of that section on the Great Manitoulin Island.
>
> ...We believe then that the preferable course to be adopted in Canada must partake both of the separatist system, and also that in which the Indians are located with the white population. Which of these elements will predominate must depend upon the locality of the band.

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> ... With sorrow however we must confess that any hopes of raising the Indians as a body to the social or political level of their white neighbours, is yet but a glimmer and distant spark. We believe that any general amelioration or marked advance towards civilization must be the result of long and patient labour, and the development of many years.[20]

As a result of the Manitoulin experiment and similar projects in the United States, separation of Indians from "white" society, as an end in itself, was not viewed as a desirable policy.

Other important recommendations by the Commissioners concerned management of Indian lands. They felt that Indian reserve land in Upper Canada was too extensive for the limited use being made of it, and they suspected that the communal form of ownership practised by Indians discouraged property improvement. The Commissioners suggested a way to encourage economic development on reserves:

> To aid this growing desire to exchange their lands for lasting annuities derived from the process of the sales, we earnestly recommend in all cases in Western Canada [Canada West] where a final location of a band shall be determined upon that each head of a family shall be allotted a farm not exceeding 25 acres in extent, including an allowance of woodland where they may obtain fuel; that for such farm he shall receive a license giving exclusive occupation of the same to him and his heirs forever on condition of clearing a certain number of acres in a given time. These documents should be so drawn as to prevent Indians from disposing of their interest in the land, except with the consent of the government; and might be revocable in proof of habitual intemperance, or for continual neglect of the same. Further inducements might be held out to the Indians by laying out on their farms a certain proportion of the sums realized by the scale of the ceded territory. It is true that the present occupants have only a life interest in the land, but such an application of the proceeds cannot be fairly considered a misapplication of the Trust as the improvement to the property would be permanent.[21]

The Commissioners suggested too that amalgamating a number of the smaller bands would further Indian welfare and reduce separate hunting grounds. They pointed out that Indians were not progressing as rapidly as expected towards mastering animal husbandry and agricultural pursuits.

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Pennefather, Talfourd and Worthington recommended a consolidation of all existing laws on management of Indian reserves and native "civilization":

> .... some of them appear to be inconsistent one with another, inasmuch as some subsequent Acts without directly repealing the former laws, make provisions irreconcileable with those previously sanctioned, while other enactments are directly over-ridden by those passed at a later date. A clear and succinct digest, combined with a short but lucid commentary of the Statutes now governing the Indian Estate would be of incalculable service at once to the Officers of the Department and the Country at large.[22]

They advocated a provision to do away gradually with tribal organizations. For example, many Indian treaties in the United States contained the following article:

> Article 5th - The Tribal organization ... except so far as may be necessary for the purpose of carrying into effect the provisions of this agreement, is hereby dissolved, and if at anytime hereafter, further negotiations with the United States, in reference to any matters contained herein should become necessary, no general convention of the Indians should be called, but such as reside in the vicinity of any usual place of payment of those only who are immediately interested in the questions involved, may arrange all matters between themselves and the United States, without concurrence of other portions of their people, and fully and conclusively and with the same effect in every respect as if all were represented.[23]

The Commissioners' findings ultimately encouraged passage of the Civilization and Enfranchisement Act of 1859-60, and the Management of Indian Lands and Property Act in 1860.

The Civilization and Enfranchisement Act of 1859, simply consolidated previous legislation regarding Indians, but not with respect to their reserves.[24] Section three of the Act of 1859 was amended in 1860. The 1859 Act had extended to the Province of Canada the provision regarding sale of liquor to Indians which had formerly applied only to Upper Canada. The amendment of 1860 raised the initial penalty for non-compliance from a maximum of five pounds (Sterling) to twenty-five dollars, but did not stipulate any sum for subsequent offences.[25]

The need for a consolidated statute governing Indian lands management became increasingly apparent during 1859-60. On 4 May 1859 a statute authorized

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construction and maintenance of roads through Indian reserves in Lower Canada (22 Victoria, chapter 60).[26] This Act was, during that year at least, mainly a response to Abenaki land petitions.[27] It was not until 30 June 1860 that an Act respecting the Management of Indian Lands and Property (23 Victoria, chapter 151) received royal assent.[28]

The Indian Lands Act of 1860 made the Commissioner of Crown Lands also the Chief Superintendent of Indian Affairs. The second clause of the Act reinstated the provisions of the 1851 statute respecting Indian lands in Lower Canada (14-15 Victoria, chapter 59).[29] Subsections one and two of the fourth clause formalized the process for surrendering Indian lands to the Crown:

> 4. No release or surrender of lands reserved for the use of Indians, or of any tribe or band of Indians shall be valid or binding except on the following conditions:
>
> I) Such release or surrender shall be assented to by the Chief, or if more than one Chief, by a majority of the Chiefs of the tribe or band of Indians, assembled at a meeting or Council of the tribe or band summoned for that purpose according to their rules and entitled under this Act to vote thereat, and held in the presence of an Officer duly authorized to attend such Council, unless he habitually resided on, or near the land in question;
>
> 2) The fact that such a release or surrender has been assented to by the Chief of such Tribe, or if more than one by a majority of the Chiefs entitled to vote at such Council or Meeting, shall be certified by the County Court Judge, or the Judge or Stipendiary Magistrate of the District or County within which the lands lie, and by the officer authorized to attend by the Commissioner of Crown Lands by such Judge or Stipendiary Magistrate, and shall be submitted to the Governor-in-Council for acceptance or refusal.[30]

The fifth clause of the Act prohibited distribution of liquor to Indians at surrender meetings. The sixth clause prohibited validation of any land surrenders or releases to any other party but the Crown.[31] Clause 7 allowed the Governor-General to apply the 1859 Act respecting sale and management of Timber on Public Lands (Consolidated Statutes of Canada, chapter 23) to Indian lands.[32] Other sections of the statute dealt with investment and expenditure of land sales money on road and school construction.[33]

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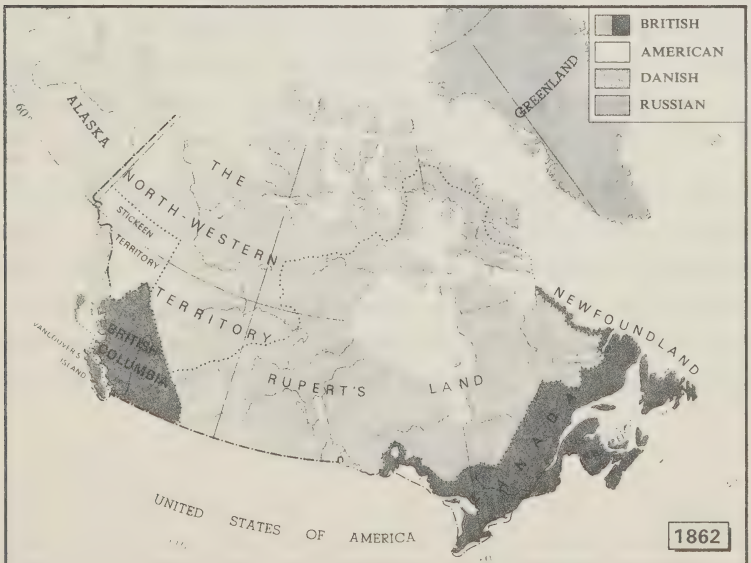
The Province of Canada is formed by uniting Upper and Lower Canada (1840). The international boundary from the Rocky Mountains to the Pacific is described by the Oregon Treaty (1846). The northern portion of the Oregon Territory is called New Caledonia, a name used by Simon Fraser in 1806. The Hudson's Bay Co. is granted Vancouver's Island to develop a colony (1849).



New Caledonia, with extended boundaries, becomes the British colony of British Columbia (1858). The Stickeen Territory is delimited (1862)

The Commissioner of Crown Lands recommended to the Executive Council of the Province of Canada on 6 August 1861 that certain sections of the 1859 Act respecting sale and managment of Public Lands be applied to Indian Lands.[34] A year later, a Committee suggested to the Governor-General that management of Indian timber become the responsibility of the Indian Branch of the Crown Lands Department.[35]

Defence, immigration and land development were the major concerns of colonial governments in British North America at this time and these considerations affected Indian policy and legislation in other regions. Chapter fifty-seven of the Revised Statutes for Nova Scotia contained guidelines for the administration of Indian affairs in that Province. Among the twenty provisions of this Statute were the appointment by the Governor-in-Council of a Chief Commissioner for Indian Affairs and definition of the duties of the Commissioner's deputies. Also included were outlines for management of Indian lands, schools, annuities or other moneys, as well as for surveys of reserves in the Province.[36]

On 15 August 1866 an "Act to confirm title to Indian Lands in the Province of Canada" dealt with Indian land transfer and conveyance.[37] It also validated the legal transfer of estates of married women prior to the Act, although no Deed, Conveyance, Instrument or Power of Attorney had been invoked according to the laws of Upper Canada.[38] The 1866 Act protected Indian lands from encroachment, yet opened them to settlement through liberal legislation governing their transfer or conveyance to other parties.

Although British Columbia did not enter Canada until 1871, it enacted some significant Indian legislation about the time of Confederation. Indeed, the Evidence Ordinance of 15 March 1867 gave Indians in British Columbia the right, at the discretion of the presiding Commissioner, Coroner or Justice of the Peace, to deliver unsworn testimony concerning any civil court action, inquest or enquiry.[39] Other important legislation was the Homestead Ordinance of 1867,[40]

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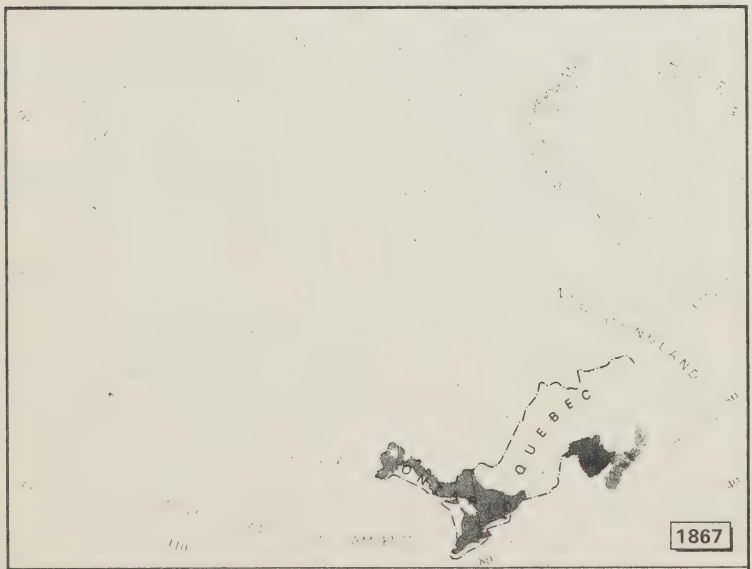
British Columbia attains its present boundaries by the uniting of the colonies of Vancouver's Island, British Columbia and the Stickeen Territory with a northern boundary along the 60th parallel.



New Brunswick, Nova Scotia and Canada are united in a federal state, the Dominion of Canada, by the British North America Act (July 1, 1867). The province of Canada is divided into Ontario and Quebec. The United States of America proclaims the purchase of Alaska from Russia (June 20).

and a 5 March 1867 Ordinance to prevent violation of Indian graves. The latter penalized all individuals who disturbed goods deposited on, in or near any Indian grave in the Colony.[41] In addition, a Liquor Ordinance on 2 April 1867 authorized Customs Officers and other officials to search all vessels suspected of transporting liquor for sale to Indians and provided penalties for non-compliance.[42]

Confederation signalled the end of an era in the evolution of the administration of Indian Affairs in Canada. Subsection twenty-four of section ninety-one of the British North America Act gave the newly-formed Federal Government authority to legislate on matters relating to "Indians and Lands reserved for the Indians."[43] The Secretary of State for Canada became Superintendent-General of Indian Affairs. This administrative shift produced extensive Parliamentary debate which continued well into 1868.[44]

The subtle shifts in government philosophy and policy from the late 1830's until 1867 was reflected in the legislation of the period. The basic tenets of these Canadian statutes created valuable precedents for national Indian policy and for the eventual preparation of a consolidated Indian Act in 1876.

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ABBREVIATIONS

AHR	American Historical Review
CHR	Canadian Historical Review
CJEPS	Canadian Journal of Economics and Political Science
CNSHS	Collections of the Nova Scotia Historical Society
EH	Ethnohistory
EHR	English Historical Review
JCS	Journal of Canadian Studies
JLAC	Journals of the Legislative Assembly of Canada
OH	Ontario History
OHLJ	Osgoode Hall Law Journal
OHSPR	Ontario Historical Society Papers and Records
RHAF	Revue d'Histoire de l'Amérique Française
WOHN	Western Ontario Historical Notes.

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The Post-Confederation Period

Introduction

Most of the changes in the Indian Act during the Post-Confederation period derived from a belief that Indians could be integrated with the majority community. Legislative changes reflected the prime interests of "white" society, rather than those of Indian people.

The most important development was consolidation of all laws respecting Indians into the 1876 Indian Act. The Act itself could be said to derive its authority from Section 91(24) of the BNA Act which provided federal legislative power over "Indians, and lands reserved for Indians". In practice, the Indian Act coincided with the extension of federal government jurisdiction, first to the Maritimes and later to the West. It made plain three principal areas of concern: lands, membership, and local government.

The Indian Act also reflected the enormous interest of an expanding frontier society in land ownership and its regularization. Emphasis on enfranchisement as a kind of reward for Indian acceptance of civic responsibility as serious citizens typified the 19th century belief in progress. "White" society regarded development of local government as a mark of progress and encouraged Indians to adopt the democratic electoral process.

In the last two decades of the 19th century, the Indian Affairs Department was concerned primarily with the extension of its work to Western Canada. Officials soon found that Eastern customs and procedures were not always applicable. Hence, a great many changes were introduced on that account in the Indian Act. Canada was then an agricultural country and it would have been highly unusual if the stress laid on agriculture as a way of life was not reflected in the Indian Act and the amendments made to it. Departmental officials believed that Indians lacked only the opportunity to become good farmers. Education of Indians was expected to work wonders. There was little or no realization that the values of community-directed or tribal people were not conducive to the pursuit of the goals of a free enterprise society.

In the last years of the century, the Indian Advancement Act was perhaps the most interesting legislation adopted by the Government. It provided for a limited form of self-government for bands which had demonstrated a capacity to assume greater responsibility for conduct of their affairs. It was regarded as a kind of privilege to be earned by bands who had acquired additional education, knowledge and skills. In the same way, Parliament passed a Franchise Act in 1885 which gave all male Indians the vote. However, objections of "white" society eventually led to repeal of this Act. The popular belief was that, because Indians were not property owners and did not pay taxes, they could hardly be regarded as responsible or serious-minded people.

Though many changes took place in the Indian Act after 1900, these were for the most part changes of degree, in that the main structural lines were already drawn. It is significant that, during Canada's first twenty-five years, when a primarily agricultural society believed strongly in the perfectability of man, the Indian Affairs Department was guided by the essentially sceptical and conservative Sir John A. Macdonald. Without his guidance, one is tempted to think that there might have been much more interference and experimentation with the Indian way of life and a much greater impetus toward integration than was the case.

The following chapters trace the development of the first consolidated Indian Act from 1876 to 1951 and, as is the style for the pre-Confederation period, begin with a brief description of the Canadian setting for Indian legislation.

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CHAPTER FOUR

Canadian Indian Policy Initiatives: 1867-1876

Between Confederation and passage of the consolidated Indian Act in 1876 (39 Victoria, chapter 18), there were several important policy initiatives and legislative measures dealing with Indian people. Canada acquired Rupert's Land and the North-Western Territory from the Hudson's Bay Company in 1870, Manitoba became the fifth province in the same year, British Columbia the sixth in 1871, and Prince Edward Island joined the Union in 1873. Canada's territorial expansion complicated the Federal Government's management of Indian affairs, assigned under section 91(24) of the British North America Act, 1867 (30 Victoria, chapter 3). Federal Indian laws and regulations applicable in various provinces and negotiation of the "numbered Treaties" with the western tribes during the 1870's necessitated consolidation of all Indian legislation in 1876.

On 22 May 1868 Parliament passed an Act providing for the organization of the Department of the Secretary of State of Canada, and for the management of Indian and Ordnance Lands.[1] This Act gave the Secretary of State of Canada, as Superintendent-General of Indian Affairs, control over management of Indian lands and property, and all Indian funds.

The eighth clause of the 1868 Act concerned Indian land surrenders and repeated the procedures of the fourth clause of the 1860 Lands Act.[2] Clauses thirty through thirty-two of the former placed all proceeds from Indian land sales or timber sales and leases with the Receiver General of Canada for the credit of the Indian Fund, as well as all monies accredited to the Indian Funds of Nova Scotia and New Brunswick. By clauses twenty-six, and thirty-four through thirty-six, the Secretary of State of Canada acquired jurisdiction over all Crown Lands across the Dominion. The thirty-seventh clause authorized the Governor-in-Council to make regulations for the protection and management of Indian lands and timber thereon. It also clarified the penalties for trespass and illicit cutting of timber on reserves.

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Hence, the Act of 1868 consolidated much of the legislation passed in the previous decade regarding protection and management of Indian interests. It continued the "guardianship policy" of Indian Affairs officials and established a precedent for administration of Indian matters in the new provinces of Manitoba and British Columbia.

The lands provisions of the 1868 Act were extended by the Enfranchisement Act of 22 June 1869. To institute a system of individual property holding, it encouraged reserve residents to obtain "location tickets" from the Superintendent-General.[3] Clause seventeen of the 1869 legislation dealt with the size of individual allotments on a per capita basis, and provided for issuance and inheritance of these patented lands. This statute sought to establish a bond between an Indian and his property similar to that between a "white" settler and his homestead.

The Enfranchisement Act of 1869 intended to free Indians from their state of wardship under the Federal Government. However, it was also designed to effect gradual assimilation only after the Indians could manage the "ordinary affairs" of the "whiteman." Indeed both Acts of 1868-69 repeated the simultaneous aims to assimilate and segregate Indians. Since the passage of the Civilization and Enfranchisement Act (22 Victoria, chapter 9) in 1859, few Indians had relinquished their status and rights in favour of enfranchisement. Hector Langevin, the Secretary of State of Canada from 1867 to 1869, expected that a large number of Indians would become enfranchised through the provisions of the 1869 Act.[4]

The Lands and Enfranchisement Acts of 1868-69 dealt with the legal definition of "Indian" in different ways. The fifteenth clause of the 1868 statute reiterated the definition of the fifth section of the 30 August 1851 Lower Canada Indian Protection Act (14-15 Victoria, chapter 59). However, the fourth clause of the 1869 Act added a "blood quantum" proviso to this definition:

> In the division among the members of any tribe, band, or body of Indians, of any annuity money, interest money or rents, no person of less than one-fourth Indian blood born after the passing of this Act, shall be deemed entitled to share in any annuity, interest or rents, after a certificate to that effect is given by the Chief or Chiefs of the band or tribe in Council, and sanctioned by the Superintendent-General of Indian Affairs.[5]

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This clause originated from the possibility of the existence of a people legally defined as Indians but with little Indian blood. The subsequent Indian Acts of Canada from 1876 through 1927 have contained some reference to Indian blood similar to the 1869 statute and to American Indian legislation.[6]

The Act of 1869 was the first Canadian statute governing status of native women after marriage to non-Indians, or to Indians of other bands. Clause six stipulated that, if an Indian woman married a non-Indian, she and her offspring would neither be entitled to collect annuities, be members of her band, nor be Indians within the meaning of the Act. If she married an Indian from another band, however, she could receive annuity as a member of his band. Moreover their children would be considered as Indians belonging to that band or tribe under the terms of the 1869 Act.[7]

In 1872, the General Council of Ontario and Quebec Indians wanted this clause amended in order that "Indian women may have the privilege of marrying when and whom they please without subjecting themselves to exclusion or expulsion from the tribe."[8] However, the provisions of the 1869 Act on membership of Indian women remained essentially unchanged in the consolidated Indian Act of 1876. The 1876 Act, moreover, extended some of the stipulations concerning status and membership of married Indian women to include illegitimate children, Indians who resided continuously outside Canada for five years and to recipients of half-breed lands or scrip under the terms of the Act of 1874 (37 Victoria, chapter 20).[9]

As a consequence of the controversial 1868 and 1869 Indian Acts, status, enfranchisement and land management constituted major concerns for the Secretary of State for the Provinces, Joseph Howe, in his additional role as Superintendent-General of Indian Affairs from 1869 to 1873. Howe's administration of Indian lands focused on the Canadian West. By Article Fourteen of the Imperial Order-in-Council of 23 June 1870 which admitted Rupert's Land and the North-Western territory into the Union, Canada had agreed to relieve the Hudson's Bay Company of all responsibility to satisfy Indian claims to compensation for lands required for settlement purposes.[10] This clause led the Canadian Government to enter into a series of treaty exercises between 1871 and 1877 with the Indians of the new Province of Manitoba, the "Fertile Belt", and the "North-west Angle" in the Lake of the Woods region, for extinguishment of the native title and interests to those areas.[11]

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In the 1871 Report of the Deputy Superintendent of the Indian Branch in the Department of the Secretary of State for the Provinces, William Spragge stated the purposes of the legislation passed by the government since 1868:

> The Acts framed in the years 1868 and 1869, relating to Indian affairs, were designed to lead the Indian people by degrees to mingle with the white race in the ordinary avocations of life.[12]

Policies aimed at securing the peaceful co-existence of Indians and settlers in the West and at promoting acculturation of Indians to the ways of "white" society, thus determined the basic course of the administration of Indian Affairs in Canada throughout the next decade.

In 1869-70 the Métis under Louis Riel rebelled when they feared the loss of their livelihood and land rights as a result of the influx of "white" settlers into the Red River colony.[13] In a measure to prevent further unrest, clause thirty-one of the Manitoba Act of 12 May 1870 authorized that one million four hundred thousand acres of the ungranted lands be appropriated for the benefit of Manitoba's half-breed population.[14] However, this provision neither satisfied half-breeds complaints against sectional surveys in the "postage stamp" Province of Manitoba nor met their demands for continuance in the Red River District of the former colony's river lot system which resembled the seigneurial "strip farms" of the St. Lawrence valley.[15]

Indian legislation was applied to new Canadian Territories. In 1871 Parliament passed an Act to make further provision for the government of the North-West Territories and applied to those lands not covered by the terms of the amended Manitoba Act.[16] By Imperial Order-in-Council of 16 May 1871 the Queen admitted British Columbia into the Canadian Union.[17] Two years later, an Order-in-Council established a Board of Commissioners to administer Indian affairs in Manitoba, British Columbia and the North-West Territories.[18]

On 3 January 1873 the Secretary of State for the Provinces, Joseph Howe, assured B.C. Indian Commissioner I.W. Powell that Indian legislation for British Columbia would be forthcoming.[19] Some of this was introduced on 26 May 1874 when Parliament passed two Acts concerning Dominion Lands in Manitoba, amendment of some Indian legislation, and extension of other Indian legislation to Manitoba and British Columbia.[20] They concerned management of Crown,

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The North-West Territories (Rupert's Land and the North-Western Territory) are acquired by Canada from the Hudson's Bay Company. From part of them Manitoba is created as the fifth province.

British Columbia joins the Dominion of Canada as the sixth province (1871), followed by Prince Edward Island as the seventh province (1873).

Public and Indian lands, of tracts needed for railway or settlement purposes, of timber and minerals found on Indian reserves and existing policies regarding Indian status, half-breed rights and sale of liquor to native people.[21]

The thirteenth article of the Terms of Union which admitted British Columbia into the Dominion in 1871 stimulated a lengthy debate between provincial and federal administrators over the Indian land policies of the former Crown colony.

> The charge of the Indians, and the trusteeship and management of the lands reserved for their use and benefit, shall be assumed by the Dominion Government, and a policy as liberal as that hitherto pursued by the British Columbia government shall be continued by the Dominion Government after the Union.
>
> To carry out such policy, tracts of land of such extent as it has hitherto been the practice of the British Columbia Government to appropriate for that purpose, shall from time to time be conveyed by the Local Government to the Dominion Government in trust for the use and benefit of the Indians, on application of the Dominion Government; and in case of disagreement between the two Governments respecting the quantity of such tracts of land to be so granted, the matter shall be referred to the decision of the Secretary of State for the Colonies.[22]

In 1869, the Colonial Secretary, Lord Granville, advised B. C. Governor Musgrave that the Constitution of British Columbia would oblige the Governor to intervene personally in many questions regarding the conditions of the Indians. However, Musgrave purposely omitted any mention of Indians in the terms proposed to the Legislative Council.[23] Indeed Parliament was unaware that B.C. Lieutenant-Governor Trutch had condemned William McColl's surveys of large reserves in the mid-1860's, and from 1867 had purchased a policy which allowed for the "fair" allotment of approximately ten acres to the head of every Indian family in the Colony.[24]

Realization that the former Colony had not based its Indian land policies on any written code, nor acknowledged Indian rights nor land titles, caused the Canadian Government on 21 March 1873 to request that British Columbia henceforth allot eighty acres for each Indian family for five and adjust accordingly the size of established reserves in the province.[25] The Province, claimed that Indian land requirements were satisfied, yet it allowed for future reserve allotments to not exceed twenty acres for each family of five.[26] A Privy Council Committee Report of 19 May 1874 advised the Minister of the Interior, David Laird,

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that "The Government does not contemplate giving the Indians of British Columbia any compensation for their lands as has been done with the Indians of the North West." [27]

Between 1872 and 1880, Superintendents Powell and Lenihan, the federally-appointed Indian Board of 1874, and the 1875 Joint Commission tried without success to effect a more "liberal" land policy for British Columbia Indians.[28] This prompted Indian Reserve Commissioner G.M. Sproat to remark to Deputy Superintendent-General Vankoughnet in 1879 that an Indian uprising in British Columbia "would not be a revolt against authority, but the despairing action of men suffering intolerable wrong, which the Provincial Government will take no steps to remedy."[29]

To quiet rumours of threatened violence, a federal-provincial committee had earlier been formed in 1875 to settle the question of reserve allotments and compensation for Indian lands. Indeed, from 1875 on several joint commissions have debated these and other matters respecting Indian land claims in the province.[30] Because of the particular Indian policies British Columbia pursued as a colony and the unique constitutional position it adopted after 1871 concerning management of Indian and Crown Lands within its jurisdiction, controversies still continue over the "B.C. Cut-off Lands".

Lieutenant-Governor Trutch's dispatch to Sir John A. Macdonald on 14 October 1872 clearly illustrated that British Columbia's Indian policies were inconsistent with those practised by the Federal Government in Manitoba and the North-West Territories.[31] A year after the conclusion of the Stone Fort Treaty of 1871 in Manitoba, which allotted quarter-section land grants to every Indian family of five and annuities to each member of the signatory bands, Trutch informed the Prime Minister:

> The Canadian system as I understand it, will hardly, work here - we have never bought out any Indian claims to lands nor do they expect we should - but we reserve for their use and benefit from time to time tracts of sufficient extent to fulfill all their reasonable requirements for cultivation or grazing.[32]

He cautioned Macdonald about the turmoil to be expected in British Columbia from either extending Indian reserves into surrounding "white" settlements or compensating Indians for lands they once held.

Trutch's warning preceded the Privy Council's Report on 21 March 1873 and the negotiation of Treaty Number Three at the Lake of the Woods in 1873 by

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Commissioners Alexander Morris, J.A.N. Provencher and S.J. Dawson, under which reserve allotments were increased to six hundred and forty acres per family of five.[33] The Canadian Government hoped that its grants of land, money and supplies to the "Treaty Indians" and non-treaty American Sioux refugees would be rewarded by peaceful settlement of the West, and that through orderly establishment of a reserve system in Western Canada, the Indians, under the guidance of agents and missionaries, might better learn the ways of "civilized" society.

The terms of the Northwest Angle Treaty of 10 October 1873 were more generous than those of Treaties One and Two in 1871. The members of the signatory bands received larger annuities and large reserve allotments. Moreover, Treaty Number Three contained many precedents for the negotiation of later Indian treaties which most often provided for farm implements and livestock, as well as for hunting and fishing rights over the unsettled areas of the ceded territories.[34] The most notable exception was Treaty Six in 1876 which also contained a "medicine chest" clause.[35]

The year 1875 marked the abolition of Indian Boards established in 1873 by the Department of the Interior to administer matters respecting Indians in Manitoba, the North-West Territories and British Columbia,[36] and instead witnessed the introduction of the "Ontario superintendency system" in these areas. However, it was becoming obvious to the Federal Government that a general Act was required which would encompass all matters of importance to the Indians throughout the Dominion.

During the spring of 1876, the Canadian Parliament recognized the need to revise some of the stipulations of the 1868-69 Indian Acts. Politicians from both parties had questioned the ambiguity and effectiveness of certain clauses in these Acts since 1871 when Simcoe Kerr, Head Chief of the Iroquois at Brantford, had proposed a new bill to settle the perennial problems of Indian status, property rights, and the illicit sale of liquor.[37] Kerr had prepared his draft on instructions from the Secretary of State for the Provinces, Joseph Howe. Although the draft totally omitted several clauses of the 1868-69 Act, the proposal neither pleased the other Six Nations chiefs nor Richard William Scott, Howe's successor as Secretary of State for Canada and the Provinces in 1873.[38]

Kerr had recommended that the rights and privileges of Indian status be extended to those persons who had an Indian parent and reputedly held interest

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in the properties of a particular Indian band or tribe. He had suggested that until Indian lands were released or surrendered to the Crown under the provisions of section seven in the new Bill, the removal, lease or alienation of any of the timber, minerals or other natural resources thereon ought to be forbidden by law. The Chief had also advised that all band monies accruing from their lands and resources be held by the federal government in a trust fund.[39]

In addition to Kerr's proposals, the Indians of the General Council of Quebec and Ontario in 1872 had requested that the Superintendent-General introduce a registry system to confirm possession of reserve lands.[40] This concern was supported later by the 1874-75 Report of the Select Committee of the Affairs of the Six Nations which revealed the Indians' continued dissatisfaction with the terms of the 1869 Act which denied them fee simple title to their lands.[41] Demands of this sort caused Six Nations Agent Gilkison to write Secretary Howe in 1874 about the expediency of repealing the provisions of all prior Indian Acts which had become complicated through extenuating circumstances.[42]

The drafters of the 1876 Act created a framework of Indian legislation which remains fundamentally intact today. When the Minister of the Interior and Superintendent-General of Indian Affairs, David Laird, introduced the new Bill to the House of Commons on 2 March 1876, he stated:

> The principal object of this Bill is to consolidate the several laws relating to Indians now on the statute books of the Dominion and the old Provinces of Upper and Lower Canada.[43]

He added that it was in the Indians' best interests to have these laws consolidated and applied to all the Canadian Provinces. Laird contended that, particularly in regard to the franchise, "the Indians must either be treated as minors or as white men".[44] On 4 April the Minister cautioned the members of the House that "they should not attempt to act in any way contrary to the views of the Indians, at least as far as their rights to property were concerned." that "this was the policy of the Administration".[45]

Deputy Superintendent-General Vankoughnet's memorandum on 22 August 1876 both corroborated Laird's statement about current policies and confirmed that "the legal status of the Indians of Canada is that of minors, with the Government as their guardians". Although the Bill's principal amendments concerned enfranchisement, the 1876 Indian Act (assented to on 12 April) as a whole contained

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few radical departures from previous policies or legislation.

The twelve subsections of the Act's third clause contained unprecedented legal definitions of such previously controversial terms as "Band", "Irregular Band", "Non-Treaty Indian", "Enfranchised Indian", "Reserve", "Special Reserve", and "Indian Lands".[47] Subsection three defined the term "Indian" as

> First. Any male person of Indian blood reputed to belong to a particular band;
>
> Secondly. Any child of such person;
>
> Thirdly, Any woman who is or was lawfully married to such person.

Thus, band membership and Indian blood constituted the key criteria for Indian status.

Five articles of subsection three, however, conditionally excluded various individuals from band membership and Indian status:

> (a) Provided that any illegitimate child, unless having shared with the consent of the band in the distribution moneys of such band for a period exceeding two years, may, at any time, be excluded from the membership thereof by the band, if such proceeding be sanctioned by the Superintendent-General:
>
> (b) Provided that any Indian having for five years continuously resided in a foreign country shall with the sanction of the Superintendent-General, cease to be a member thereof and shall not be permitted to become again a member thereof, or of any other band, unless the consent of the band with the approval of the Superintendent-General or his agent, be first had and obtained; but this provision shall not apply to any professional man, mechanic, teacher or interpreter, while discharging his or her duty as such:
>
> (c) Provided that any Indian woman marrying any other than an Indian or a non-treaty Indian shall cease to be an Indian in any respect within the meaning of this Act, except that she shall be entitled to share equally with the members of the band to which she formerly belonged, in the annual or semi-annual distribution of their annuities, interest moneys and rents; but this income may be commuted to her at any time at ten years' purchase with the consent of the band:
>
> (d) Provided that any Indian woman marrying an Indian of any other band, or a non-treaty Indian shall cease to be a member of the band to which she formerly belonged and become a member of the band or irregular band of which her husband is a member:

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> (e) Provided also that no half-breed in Manitoba who has shared in the distribution of half-breed lands shall be accounted an Indian; and that no half-breed head of a family (except the widow of an Indian, or a half-breed who has already been admitted into a treaty), shall, unless under very special circumstances, to be determined by the Superintendent-General or his agent, be accounted an Indian, or entitled to be admitted into any Indian treaty.

Article (b) intended to curtail the alleged practice by some Indians, especially in the North-West, of drawing annuities from both the Canadian and American governments.[48] Articles (c) and (d) hoped to remove Indian animosity over the denial of annuity payments to those native women who married anyone other than a treaty Indian. The terms of article (e) embodied Laird's declaration of 28 March 1876 against preferential treatment of Métis or half-breeds in Manitoba.

> He did not see why half-breeds in Manitoba should be treated differently from half-breeds in other Provinces. They could have withdrawn [from treaty] under the Act of 1874 [37 Victoria, chapter 20]. Those who did not choose to withdraw had to be treated as Indians.[49]

Since 1830 there had been a wide-spread belief that Indians would not improve their lands until they received registered titles to individual plots. Demands at that time by the Mississaugas were reiterated by the General Council in 1872.[50] The Indian Act of 1876, through clauses four to ten, addressed these requests by providing for issuance of location tickets for individual land parcels on reserves. In addition, clause nine ensured that property of a deceased Indian would remain within the family first, and ultimately with the band.[51]

Clauses eleven through twenty dealt with protection of reserves from encroachment and damage. The sixteenth clause of the 1876 Act provided strict penalties for offences committed by trespassers on reserves. Clause twenty empowered the Superintendent-General to act as the Indians' representative in obtaining compensation for expropriation of any Indian lands:

> If any railway, road, or public work passes through or causes injury to any reserve belonging to or in possession of any band of Indians, or if any act occasioning damage to any reserve be done under the authority of any Act of Parliament, or of the legislature of any province, compensation shall be made to them therefor in the same manner as it provided with respect to the lands or rights of other persons; the Superintendent-General shall in any case in which an arbitration may be had, name the arbitrator

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> on behalf of the Indians and shall act for them in any matter relating to the settlement of such compensation; and the amount awarded in any case shall be paid to the Receiver General for the use of the band of Indians for whose benefit the reserve is held, and for the benefit of any Indian having improvements thereon.[52]

This clause had hidden significance in 1876. Compensation for damages caused by railway rights-of-way and by public road allowances through Indian reserves did not trouble the Government until the late nineteenth century when construction of Canadian Pacific spur-lines across Indian lands roused the ire of many western bands.

Clauses twenty-five through twenty-eight determined conditions under which Indians could surrender reserve lands. Clause twenty-five stipulated:

> No reserve or portion of a reserve shall be sold, alienated or leased until it has been released or surrendered to the Crown for the purposes of this Act.[53]

This supported the view that Indians "were like children to a very great extent" and "required a great deal more protection than white men."[54]

The Minister claimed that the 1876 Act's twenty-sixth clause gave better protection to Indian interests than the eighth clause of the 1868 statute which had conditionally validated reserve land surrenders on the assent of only the chief or majority of chiefs of the band.[55] Deputy Superintendent-General William Spragge had actually tried to amend this section by the thirteenth clause of the unrevised 1874 Indian Bill:

> No release or surrender of land specially reserved by, or set apart for any Band or Body of Indians, shall be valid unless assented to in a Council (specially convened for the purpose) by two-thirds of the male members thereof, of full age, entitled to vote in General Councils of their Tribe or Band: Provided nevertheless, that cessions to the Crown, of Territory, in unorganized Districts shall be valid and sufficient if the conveyance and surrender be concurred in, by a majority of the Indians present at a General Council, called together specially for that object; and such surrender shall be proved before a justice of the Peace, by the duly authorized representative at such council of the Superintendent General of Indian Affairs; and by one at least of the Chiefs of the Tribes or Band interested in such lands; and the Surrender when completed shall be submitted to the Governor in Council for acceptance, or refusal.[56]

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During the Debates in the House on 21 March 1876, Hector Langevin, the principal designer of the 1869 Enfranchisement Act, asked Laird whether clause twenty-six of the new Indian Bill meant assent of the majority of all male band members or only a majority of males present at a surrender meeting. Laird specified the latter and added that "the Department took good care in their practice not to allow these surrenders unless the Indians were at home at the time."[57] Langevin maintained some provision had to be added to this as well as the sixty-first clause of the Act respecting election of chiefs, to ensure presence of a certain proportion of a band at any surrender meeting or election.[58]

Clause twenty-six of the Act did not incude Langevin's precautionary measures:

> 1. The release or surrender shall be assented to by a majority of the male members of the band of the full age of twenty-one years, at a meeting or council thereof summoned for that purpose according to their rules, and held in the presence of the Superintendent-General, or of an officer duly authorized to attend such council by the Governor in council or by the Superintendent-General; provided, that no Indian shall be entitled to vote or be present at such council, unless he habitually resides on or near and is interested in the reserve in question;
>
> 2. The fact that such release or surrender has been assented to by the band at such council or meeting, shall be certified on oath before some judge of a superior, county or district court, or stipendary magistrate, by the Superintendent-General or by the officer authorized by him to attend such council or meeting, and by some one of the chief or principal men present thereat and entitled to vote, and when so certified as aforesaid shall be submitted to the Governor in council for acceptance or refusal; ...[59]

Inclusion of Langevin's measures might have limited the subsequent debate which arose over "the majority question" and the oath of certification required for a valid surrender.

Clauses twenty-nine through forty-four of the new Act rewrote many provisions of the 1868 statute respecting sale and management of Indian lands. Clauses thirty-one through thirty-four, and thirty-nine through forty-two, dealt with assignment and patent of former Indian lands. The thirty-fifth, forty-third and forty-fourth clauses of the Act outlined penalties for fraud and misdemeanour.[60] The next thirteen clauses of the 1876 Act concerned management and sale of timber on reserves. These expanded on the seventh, eleventh, and twenty-second clauses of the 1868 statute.[61]

Much of the 1876 Act concerning protection of reserve lands and resources was taken verbatim from the Indian Protection Acts of 1850 for Upper and Lower Canada.[62] The Acts of 1850 and 1860 respecting administration of Indian lands in the Province of Canada differed most with the 1876 Act's clauses concerning surrender proceedings, inheritability of location tickets, and penalties for trespass.[63]

Clauses fifty-eight through sixty dealt with management and investment of Indian funds at the discretion of the Governor-in-Council. Clause sixty provided that

> the proceeds arising for the sale or lease of any Indian lands, or from the timber, hay, stone, minerals or other valuables thereon..., shall be paid to the Receiver General for the credit of the Indian fund.[64]

The sixty-first through sixty-third clauses concerned elections of chiefs and councils and gave Indians more control in local government than previously. The Enfranchisement Act of 1869 had provided for a form of local government through election of one chief for every band of thirty members or in "the proportion of one Chief and two Second Chiefs for every two hundred people." Under clause ten in that Act, elected chiefs would stay in office

> for a period of three years unless deposed by the Governor for dishonesty, intemperance, or immorality ...; Provided always that all life Chiefs now living shall continue as such until death or resignation, or until their removal by the Governor for dishonesty, intemperance or immorality.[65]

The same provisions were in clause sixty-two of the new Act. Subject to final authority of the Governor-in-Council, clause sixty-three empowered chiefs to frame rules and regulations related to

1. The care of the public health;
2. The observance of order and decorum at assemblies of the Indians in general council, or on other occasions;
3. The repression of intemperance and profligacy;
4. The prevention of trespass by cattle;
5. The maintenance of roads, bridges, ditches and fences;
6. The construction and repair of school houses council houses and other Indian public buildings;
7. The establishment of pounds and the appointment of pound-keepers;

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> 8. The locating of the land in their reserves, and the establishment of a register of such locations.[66]

The Government no doubt assumed that substitution of limited local administration for existing tribal organizations would accelerate the assimilation process. Similarly, issuance of individual location tickets would gradually eliminate communal tenure practices.

Under the general heading "Privileges of Indians" clauses sixty-four through sixty-nine excluded Indian people from taxes, liens, mortgages or other charges on their lands and from loss of possessions through debt or through pawns for intoxicants. Clause sixty-four authorized taxing Indian real and personal property only if held under lease or in fee simple outside reserve or special reserve limits.[67] In addition, having taken into consideration that few Indians held the franchise and that responsibility for roads maintenance, bridges, ditches and fences on reserve lay with Indians, clause sixty-five exempted from taxation

> all the lands vested in the Crown, or in any person or body corporate, in trust for or for the use of any Indian or non-treaty Indian, or any band or irregular band of Indians or non-treaty Indians.[68]

In fact, the Government reinstituted this "tax-exemption" clause, omitted in the 1869 Act, in essentially the same form as it had first appeared in the fourth section of the 1850 Upper Canada Indian Protection Act.[69]

J.A.N. Provencher, Acting Indian Superintendent at Winnipeg, recommended to the Minister on 9 October 1876 that a provision be added to the sixty-sixth clause of the Act to hold some Indian commercial affairs open to "legitimate claims of creditors."[70] Provencher's suggestion reflected sentiments which had been expressed by the Liberal Members from North and South Brant during their debate with the Minister on 30 March:

> Mr. Fleming said this clause was unfair to the Indians, and the system of tutelage in which they were kept deprived them of the spirit of self-reliance and independence. ...The suggestion to allow chattel mortgages to be taken on articles purchased in that way was only fair and right.
>
> Hon. Mr. Laird said the Indians could purchase all the implements they needed with their annuity money. In 1869 a clause similar to this was inadvertently repealed. The Indian Agents considered it was very highly necessary, and that was why he proposed to re-enact it now. Unfortunately the Indians seemed to get too much credit already,....

> Mr. Paterson said it was all nonsense to suppose that the annuity money was sufficient to purchase implements. This clause would inflict serious injury on the Indians. Instead of this Bill being in advance in this respect of previous legislation, it was retrogressive.[71]

Despite these views, Laird did not introduce any amendment to the sixty-sixth clause. Clause sixty-seven enabled Indians to sue for any debts due them or any wrongs inflicted on them. Clauses sixty-eight and sixty-nine embodied the thirteenth and fourteenth articles of the 1868 Act which protected some Indian goods from loss or seizure under special circumstances.

In the category of "Disabilities and Penalties" were clauses seventy, which excluded Indians from taking homesteads in Manitoba and the North-West Territories, and clauses seventy-one and seventy two, which refused payment of annuities to convicted criminals and family deserters.[72] Clause seventy was construed by some members of the Commons as being discriminatory:

> Mr. Fleming did not see why an Indian had not as good a right to emigrate to Manitoba and get a homestead as a white man.
>
> Mr. Schultz said it seemed to be held by the Government that because they gave the Indians an annuity of $5 per head the latter were to be deprived of every right and privilege which a white man holds dear. He did not see why the Indians of the Northwest, when they became as intelligent as those in Brant, should not have the right to get homesteads for themselves.[73]

It seems fairly clear that clause seventy was to prevent Indians who had signed treaties from claiming both a share of a reserve and a homestead. In the case of clause seventy-one for stopping annuity payments to imprisoned Indians, similar objections were raised:

> Mr. Paterson said he could see no reason why an Indian who is subject to the same laws as white men should be punished with greater severity for infractions of the law. A white man when convicted and imprisoned for the perpetration of a crime does not forfeit his income; but the Indian for a similar offence, not only undergoes the same punishment, but loses his income while his term of imprisonment lasts.[74]

Clauses seventy-four through seventy-eight concerned admission of evidence in courts by non-Christian Indians, particularly from western natives who had not received the same exposure as their eastern counterparts to missionary teachings. Interestingly, these clauses expanded on similar terms contained in clause ten

of King George III's Instructions to Governor Carleton in 1775.[75] This portion of the Act illustrates a distinction the Canadian Government made in 1876 between eastern and western tribes.

Clauses seventy-nine and eighty repeated the first clause of the 1874 statute respecting penalties for illicit sale of intoxicants to Indians in Manitoba and the North-West Territories.[76] With little alteration, the terms of this clause were to apply henceforth throughout the Dominion.

Finally, clauses eighty-six to ninety-four related to enfranchisement. Any Indian who was "sober and industrious" could go to an agent appointed for that purpose, to see whether or not he was qualified for the franchise. If qualified, he received a ticket for land, and after three years was entitled to receive a patent (title deed) for it. This would give him absolute control of the land during his life and he could then will it to whomever he chose. During this three-year period, he retained his share in band funds. After an additional three years, he could make application and gain possession of his share of the invested funds of the band. Thus, after six years of "good behaviour" he would cease in every respect to be an Indian according to Canadian laws and would then be an ordinary subject of Her Majesty.[77]

Under the Act of 1869, having obtained band consent and following three years of probation, an Indian obtained full title to his property. He also retained his right to annuities, interest money and rents of the tribe.[78] However, as Hector Langevin, Opposition Member of Parliament for Charlevoix, pointed out in the House of Commons on 4 April 1876, few bands consented to bestow the franchise on individuals because granting of fee simple title would potentially open reserves to "white" occupancy. Langevin suggested that the Liberal Government consider instead gradual enfranchisement of all Indians.[79] In addition, Liberal M.P. William Paterson suggested an amendment that would allow Indians to appeal to the Superintendent-General in cases where band majority refused enfranchisement. However, the Minister of the Interior declined to take either suggestion and maintained that Indians were content with the Bill as it stood.[80]

The concerns of Langevin and Paterson appear to have been well-founded as very few Indians voluntarily sought enfranchisement over the next five years. However, all the Wyandottes of Anderdon became enfranchised in 1881 under clause

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ninety-three which provided for voluntary enfranchisement of all band members on consent of the Superintendent-General. This consent was subject to evidence of exemplary good conduct, ability to manage property, character, integrity, morality and sobriety.[81]

Finally, the Act's nine-fourth clause excluded, unless otherwise proclaimed by the Governor-General, Indians of British Columbia, Manitoba, and the North-West Territories and Keewatin from the preceding eight clauses on enfranchisement.[82] The remaining clauses of the 1876 statute concerned affidavits required under the Act, authority of the Governor-in-Council to exempt Indians from any clause of the Act, and repeal of certain provisions in previous legislation.[83]

The passage of the first consolidated Indian Act in 1876 solved only a few of the problems of the Canadian government since 1867. In the next four years, the Act underwent major and minor revisions to meet both new and longstanding issues. The Act of 1876, nonetheless, formalized the duties and position in the Canadian Cabinet of the Superintendent-General of Indian Affairs.

Laird had fulfilled the dual role of Minister of the Interior and Superintendent-General since November, 1873.[84] The 1876 Act diminished the Governor-in-Council's authority respecting Indian legislation and gave more discretionary power to the Superintendent-General. Later amendments, however, allowed for court appeals against any of the latter's decisions, particularly with regard to Indian land management.

The Government had revised certain provisions in the Bill to accommodate more advanced bands such as the Six Nation Iroquois at Brantford, and had altered other provisions to accelerate acculturation of the "less civilized" Western tribes. Articulate Indians had some effect on formulation of the 1876 Act, notwithstanding protests from the Grand River Band that William Paterson, M.P., had not consulted them "in a proper way" on the new Bill.[85] Acknowledgement of native recommendations by the Indian Branch of the Department of the Interior in 1876 demonstrated a perceptiveness and sense of moderate compromise unparalleled by most Indian Affairs administrations in British North America since the mid-eighteenth century.

Laird's administration miscalculated the urgency to define the Department's jurisdiction over the various classes of people in the West. In 1874, the half-breed residents of Manitoba and the North-West Territories demanded that Lieutenant-Governor Morris officially recognize their rights.[86]

The Manitoba Act of 1870 had attempted to compensate some of their land claims by Crown grants. The 1874 Act respecting appropriation of certain Dominion Lands in Manitoba allowed all persons who had formerly accepted Indian treaty benefits to withdraw from that treaty and give up Indian status.[87] By 1876, the Department of the Interior desperately wanted to resolve the question of half-breed lands in Manitoba and the Territories.[88]

Although the 1876 Act addressed some of the problems surrounding status and land claims of both Indians and half-breeds in Manitoba and the Territories, disputes continued and finally climaxed with the North-West Rebellion of 1885.

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CHAPTER FIVE

Western Affairs and New Legislation: 1876-1886

By 1879 the buffalo had almost disappeared from the Canadian prairies and this marked the loss of the Plains Indians' major source of livelihood. With the return of the Conservatives* to power in 1878, part of Sir John A. Macdonald's "National Policy" was the peaceful settlement of the western Indians on reserves and their adoption of agricultural pursuits. The sudden change in lifestyle, the harsh winters, epidemics, famine, and the great influx of non-Indian settlement which accompanied construction of the C.P.R. contributed to widespread Indian and Métis unrest and the North-West Rebellion of 1885. This decade was marked by successive Indian Act amendments to deal with the effects of these events and witnessed the establishment of a separate Department of Indian Affairs.

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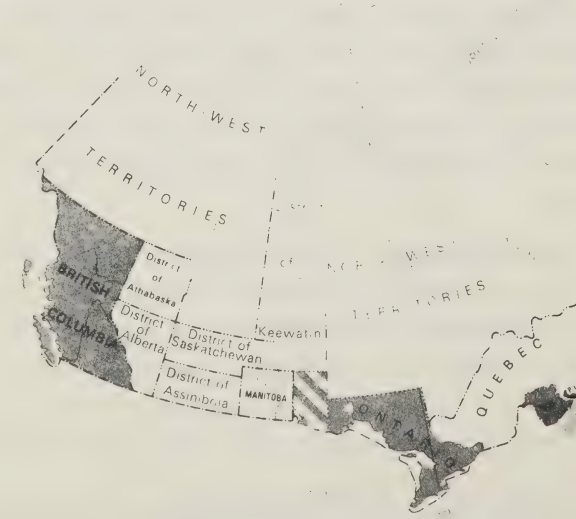
The Indian Act amendments of 1879 through 1884 complemented the Prime Minister's "civilization" programme for Indians, to enfranchise the "more acculturated" tribes of the older provinces and to "advance" the Indians of the North-West through establishment of "model farms" and industrial schools to teach agricultural techniques or mechanical trades. Such endeavours were complicated by the illegal "whisky trade" in the North-West, prostitution of native women, and exploitation of Indians by settlers, merchants and speculators. Moreover, it was difficult to recruit capable instructors who had Indian interests in mind.

The Indian Branch of the Department of the Interior became a Department of its own in 1880, but remained under the Minister of the Interior who acted as Superintendent-General.[1] Subsequently, Parliament passed a statute in 1883 which essentially split Macdonald's duties as titular head of the Department of Indian Affairs and the Interior.[2] However, the pre-eminence of the Deputy Superintendent-General as chief administrator of the Indian Department's daily

* For the purposes of this work, Mackenzie's Liberal-Reform Government and Macdonald's Liberal-Conservative Government shall be referred to as the Liberals and Conservatives, respectively.

New provisional northern and western boundaries of Ontario are described (1874). From part of the North-West Territories, the District of Keewatin is created (1876).



British rights to the arctic islands pass to Canada (1880). The boundaries of Manitoba are extended (1881), but the extension to the east is contested by Ontario. The provisional Districts of Assiniboia, Saskatchewan, Athabaska, and Alberta are created (1882).

operations had increased steadily since the 1860's under William Spragge. It climaxed during Vankoughnet's tenure from 1874 to 1893. By the early 1880's all major decisions were being made by this officer. In 1885, the Department acquired four additional branches to deal with native schools, official correspondence, survey and sale of Indian Lands.[3] More rigid control by the Ottawa office during the 1880's stalled decentralization of the Department and hindered management of local issues by regional administrators.

Vankoughnet's cost-conscious, bureaucratic appraisal of the difficulties of western Indians, whose traditions were dying with the buffalo, countered the humanitarianism of Macdonald "civilization" program. Implementation of Vankoughnet's directives for limited rations and reduced agricultural aid aggravated the troubled situation of Indians and Métis in the North-West.[4] They felt that their problems were being ignored by the Department's eastern-dominated executive. Unfamiliarity with the cultural traits of the Plains Indians, Minister of the Interior Laird's inexperience with western affairs prior to drawing up the 1876 Act, and Vankoughnet's resistance to decentralized authority, compounded the difficulties of Western native people.

From October 1876 the Interior Department received various inquiries and suggestions concerning the intended meaning and application of the Indian Act's provisions respecting intoxicants,[5] prosecution of trespassers and illicit removal of natural resources from Indian lands.[6] The problem of enforcing the Indian Act's liquor, trespass and timber laws continued into the 1880's for two reasons. First, provincial authorities, especially in British Columbia, refused to employ their district constables for apprehension of persons disobeying federal regulations.[7] Secondly, the Indian Act Amendment Bill of April 1877, which addressed these issues, was withdrawn as a result of Langevin's objections to the increased authority of the Superintendent-General.

The aborted Indian Act Amendment Bill of 24 April 1877 dealt with seizure of wood cut on Indian Reserves by unauthorized persons, and trial of such offenders by Stipendiary or Police Magistrates and Justices of the Peace.[8] Parliamentary Debate on the Bill also concerned revision of the Act's sixty-ninth clause regarding sale, exchange or barter of goods given to Indians by Government. The suggested amendment to this section authorized the Superintendent-General or his deputies to

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confiscate any property, especially government gifts, purchased or obtained from Indians in contravention of the Act.

In the House of Commons on 25 April 1877, Sir Hector Langevin objected that the Superintendent-General was not the judicial officer but the complainant in these cases, and therefore did not have the authority to issue a warrant for collection of fines by the presiding Stipendiary Magistrate or Justice of the Peace.[9] While Langevin contended that the 1877 amendments gave too much discretionary authority to the head of the Indian Branch, Prime Minister Alexander Mackenzie suggested that reduction of all the Minister's powers under the Indian Act might be considered by the House. The Indian Act Amendment Bill was withdrawn on 26 April 1877 to permit further discussion on this issue.[10]

Federal-Provincial disagreement on jurisdiction over Indian Affairs had intensified in British Columbia since the early 1870's. Indian administration in British Columbia was chaotic because, in addition to personal inadequacies of federal officials, nearly every move was impeded by the Province. British Columbia was unwilling to make any concessions to the Indians and opposed any significant changes by the federal government to the settlement-oriented policies that existed before Confederation. As Andrew C. Elliott, British Columbia Premier from February 1876 to June 1878, wrote to G.M. Sproat, a member of the Joint Commission appointed in 1875, the Canadian Minister of the Interior was thousands of miles from the scene and knew nothing of the facts or merits of provincial policy.[11] At the same time, Sproat was amused at the dogmatism of those government members who had spent their time in Victoria but gave the appearance of understanding the wishes, requirements, and social condition of a diverse Indian population.[12]

The work of the Joint Commission, appointed in 1875 to resolve the question of land allotment for B.C. Indian reserves, also became more difficult during the decade. After 1876 the task of the Commissioner was complicated by the Indian department's division of the Province into two Superintendencies. The Annual Report of the Department of the Interior for 1876 announced that after 1 February 1876 British Columbia was to have two Superintendents, Dr. I.W. Powell in Victoria to assume responsibility for the coast Indians and James Lenihan at New Westminister to assume charge of the interior tribes. Further reorganization was carried out in 1880 with the appointment of district agents.[13]

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From February 1877 to March 1878, the Government of British Columbia pressed the Governor-General of Canada for dissolution of the Commission. Public opinion was rapidly building against the Reserve Commission. Many settlers, both on the coast and in the interior, thought that the Commission was being too liberal towards the Indians. In the interior Sproat had tried not to interfere with settler interests, but they still protested bitterly when Indian reserves were established adjacent to their land. One group of South Thompson River settlers, for example, objected to Indian neighbours as being "a constant source of annoyance" because of their wandering stock and "the well known thieving proclivities of the Indians themselves."[14] The administrations of Andrew Elliott, and subsequently that of George Walkem, were attuned to settler demands because their votes could often be crucial to these governments with their small majorities. This attitude in Victoria was a constant influence on the Joint Commission's work.

In June 1878 George Walkem formed the Government as public pressure continued to mount against the Commission. Finally, Sproat resigned under pressure in 1880. On his resignation he submitted to Ottawa a long list of matters outstanding with the Provincial Government. In 1878 the Provincial Government made it clear that it was not prepared to regard any decision made by Sproat as final, although it added that it would interfere only in extreme cases. The British Columbia Government must have regarded every decision made by the Commission as extreme, because, at the time of Sproat's resignation, not a single Indian reserve laid out by the commission had received approval by the Provincial Department of Lands and Works.[15]

Federal and provincial conflicts occurred in Ontario as well in the late 1870's. On 31 March 1879 Simon J. Dawson, M.P. (Algoma) remarked in the House of Commons that the Indian Act's enfranchisement provisions, which were contingent on breaking up and parcelling out reserves, were not applicable in Ontario. The Ontario Election Law prevented all Indians, whether they owned their land in fee simple or simply held it in common with the rest of the tribe, from voting. Dawson's motion for return of all Indians enfranchised since 1869 to their respective bands and tribes was agreed on in principle.[16] It has not been determined whether this was ever carried out.

A dispute was also taking place over payment of increased annuities in the Robinson Treaties of 1850.[17] On 1 May 1879 Parliament voted an increase from 60¢

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$4. per head and Prime Minister Macdonald agreed with Sir Richard J. Cartwright (Huron Centre) and Simon J. Dawson (Algoma) that the Ontario Government should bear the responsibility.[18] On 23 April 1880, Dawson suggested that "the claims of the Indians of Lakes Huron and Superior formed, in fact, a lien on the land, and that as the Government of Ontario received revenues from the land, that Government should be called upon to meet the arrears due to the Indians."[19] Ultimately, the Judicial Committee of the Privy Council upheld (1896) an earlier Supreme Court decision that liability for these annuities lay with the Dominion, not the Province.[20]

The 1879 amendments and 1880 Indian Act revealed the Macdonald Government's desire to establish separate administrative policies for Indians and Métis. To complement Vankoughnet's budgetary measures and Macdonald's "civilization" programme, the Conservatives promoted withdrawal from treaty of all half-breeds whom had adopted the legal status of "Indians". The first clause of the 1879 Act amended clause 3(3)(e) of the 1876 statute by adding provisions for the discharge of half-breeds from treaty:

> And any half-breed who may have been admitted into a treaty shall be allowed to withdraw therefrom on refunding all money received by him or her under the said treaty, or suffering corresponding reduction in the quantity of any land, or scrip, which such half-breed as such may be entitled to receive from the Government.[21]

The fourteenth clause of the Indian Act of 1880 (43 Victoria, chapter 28) contained the same provision. Four years later, however, the fourth clause of an Act to amend further the 1880 Indian Act eliminated all the words after "on" from the above quotation and substituted the phrase:

> signifying in writing his or her desire so to do, which signification in writing shall be signed by him or her in the presence of two witnesses, who shall certify the same on oath before some person authorized by law to administer the same.[22]

This latter enactment and the Government's decision in 1885 to issue script to the half-breeds of the Territories resulted in a flood of applications for discharge from treaty.[23]

The statutes of 1879 and 1880 showed Government's concern for protection of Indians and their land, particularly in the North-West. Clauses two, three and

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five of the amendments of 1879 embodied the proposed revisions of 1877 to clauses sixteen, seventeen and sixty-nine of the 1876 Act regarding enforcement of the trespass, timber and "illicit sale or exchange" laws.[24] The seventh and eighth clauses of the 1879 Act tried to establish more effective legislation to curtail prostitution of Indian women.[25] These were repeated in the ninety-fifth and ninety-sixth clauses of the 1880 Act and penalized not Indian women engaged in that offence, but the "keeper of the house[26]

Macdonald's National Policy relied on the Department of the Interior's successful promotion of agricultural pursuits among Indians and Métis for the peaceful settlement of the Canadian prairies. Deputy Superintendent-General Vankoughnet's letter on 27 April 1880 to Indian Agent Gass at Shubenacadie, Nova Scotia, outlined the intended application of Macdonald's plan in eastern Canada as well as the North-West:

> You should by every means in your power endeavour to persuade the Indians within your district to pursue industrial employment by cultivating the soil etc. for living; and no encouragement should be given by you to idleness by gratuitous aid being furnished to able-bodied Indians.[27]

Proposed establishment of residential, agricultural or industrial schools in the Territories sparked a debate over the best way to facilitate rapid acculturation of all Canadian Indians. The Government was undecided whether to isolate or integrate them.[28] Sir Hector Langevin maintained in 1883 that Indians at these schools would increase their knowledge of agriculture, mechanical skills and general education more effectively away from the traditions and influence of their band.[29] William Paterson, Liberal Member for South Brant, agreed that there would be no solution to "the Indian problem" by "shutting them up in reserves and maintaining the tribal relation for all time to come."[30] On the other hand, Simon J. Dawson (Algoma) argued that while the franchise and holding of property would help to "civilize" Indians, the tribal system protected them against "the encroachment of the whiteman."[31]

Such debate preceded drafting of the 1884 Indian Advancment Act which sought to transform tribal regulations into municipal laws and introduce to band councils a system of self-government. It climaxed Macdonald's efforts to protect yet gradually "civilize" the native population. His administration effected minor

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changes in 1880 to the sections of the 1876 statute concerning local government. Indeed the 1880 Act's seventy-second and seventy-fourth clauses on local government contained provisions not included in the similarly-oriented sixty-second and sixty-third clauses of the 1876 legislation.[32] Clause seventy-two in 1880 provided

> that in the event of His Excellency ordering that the chiefs of a band shall be elected, then and in such case the life chiefs shall not exercise the powers of chiefs unless elected under such order to the exercise of such powers.[33]

This clarified the position of hereditary or "life" chiefs in relation to the electoral system introduced under section sixty-two of the 1876 Act.[34]

Subsections one, ten and eleven of the seventy-fourth clause of the 1880 legislation increased the powers granted to band councils in clause sixty-three of the 1876 statute. Chiefs could henceforth frame laws in the following areas:

> 1. As to what denomination the teacher of the school established on the reserve shall belong to; provided always, that he shall be of the same denomination as the majority of the band; and provided that the Catholic or Protestant minority and likewise have a separate school with the approval of and under regulations to be made by the Governor in Council;
>
> 10. The repression of noxious weeds;
>
> 11. The imposition of punishment, by fine or penalty, or by imprisonment, or both, for infraction of any such rules or regulations; the fine or penalty in no case to exceed thirty dollars, and the imprisonment in no case to exceed thirty days; the proceedings for the imposition of such punishment to be taken in the usual summary way before a Justice of the Peace, following the usual procedure on summary trials before a justice out of session.[35]

The membership and enfranchisement provisions of the 1876 Act remained essentially unchanged in 1880. The new legislation however, did alter those sections which concerned native women married to non-treaty Indians and Indians holding university degrees. Clause thirteen of the new statute stipulated that if a native woman married a non-treaty Indian,

> while becoming a member of the irregular band of which her husband is a member, she shall be entitled to share equally with the members of the band of which she was formerly a member in the distribution of their moneys; but this income may be commuted to her at any time, at ten years' purchase with the consent of the band.[36]

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The 1880 Act also amended the first subsection of the eighty-sixth clause of the 1876 statute which had enfranchised any Indian holding a university degree.[37] Subsection one of the ninety-ninth clause in the 1880 legislation declared that an Indian with a university degree

> shall upon petition to the Superintendent-General *ipso facto* become enfranchised under this Act, and he shall then be entitled to all the rights and privileges to which any other member of the band to which he belongs would be entitled were he enfranchised under the provisions of this Act; and the Superintendent-General may give him a suitable allotment of land from the lands belonging to the band of which he is a member.[38]

The ninety-fourth clause, of the 1876 Act, appeared as clause one hundred and seven in 1880 and excluded Indians of British Columbia, and the North-West Territories and Keewatin from the enfranchisement provisions of the Indian Act "save in so far as the said sections may, by proclamation of the Governor-General, be from time to time extended, as they may be, to any band of Indians in any of the said provinces or territories."[39]

The basic framework of the 1880 Indian Act remained the same until 1951. There were a number of additions made and some alterations. Amendments appeared before Parliament almost annually, in each case reflecting either new problems arising in the management of Indian Affairs, or changing relationships between Indians and the majority society.

The major changes instituted in 1881 related to the North-West and were introduced to provide, first, for better administration of Indian Affairs there and, second, to ensure success of the department's policy of settling Indians on reserves and instructing them in farming. As the Prime Minister conceded to the Opposition on 17 March 1881, the Government's experiment of inducing Western Indians and Métis to change their traditional habits was still in its preliminary stages.[40] To this end, officers of the Indian Department were made ex-officio Justices of the Peace, magistrate jurisdiction in towns and cities was extended to reserves, and the Governor-in-Council was empowered to appoint a number of Assistant Indian Commissioners to co-ordinate better the activities of the increased number of officials in the area.[41]

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In terms of promoting the farm instruction program, Liberal Member David Mills (Bothwell) protested that the first three clauses of the Bill which partly restricted Indian people from selling the produce of their labour denied them the right to reap the full benefits of their work.[42] Macdonald, on the other hand, argued that these stringent regulations, which applied only to Indians of western Canada, were intended to prevent them from selling goods for liquor or other worthless items.[43] William Paterson (South Brant) claimed that this placed Indians in a position of absolute tutelage to the federal government. The Prime Minister replied that the "wild nomad of the North-West" could not be judged on the same basis as "the Indian of Ontario."[44]

Consideration of the respective land rights of settlers, half-breeds and Indians in the Territories hampered implementation of the Department's "civilization" programme. Half-breed demands for land and money scrip in the Territories were compounded by agitation over disputed land patents, homestead grants to new settlers, and surveys which ignored their property claims.[45] Indians contended in 1884 that they had signed the "numbered treaties" of the 1870's to allow the "whiteman" to "borrow", not "buy", their lands,[46] and Government had not fulfilled its treaty obligations.

In answer to this charge, Deputy Superintendent-General Vankoughnet stated in December 1884 that the Indians had "no good reason for serious complaint", that they were "most generously treated by the government far beyond any expectation they could have entertained under the most liberal interpretation" of the treaties.[47] The Department had not fulfilled some treaty promises by 1885; however, it was not due to any oversight or corruption, but the view that some bands had not sufficiently advanced to take full advantage of the promised tools, livestock and schools.[48]

The Amendments of 1882 (45 Victoria, chapter 30) were in general, slight changes in wording to remove ambiguities in the 1880 legislation. Clause twenty-seven of the 1880 Act was amended to require two Justices of the Peace to adjudicate new cases involving illegal extraction of hay, timber, or minerals from Indian reserves.[49] This procedure, however, could not be carried out effectively in the North-West where judicial officers were few and far between. Clause four in the 1882 legislation revised the seventy-eighth clause of the 1880 Act which permitted Indians to sue for debts or to compel performance of obligations contracted

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with them.[50] Moreover, to curtail "Indian fondness for petty litigation" and to avoid irregularities which accompanied retrial of such cases, the Government prohibited appeals against initial decisions of presiding District Stipendiaries, Police Magistrates, or Justices of the Peace.[51] To clause seventy-eight was added:

> But in any suit between Indians no appeal shall be from an order made by any District Stipendiary, Police Magistrate, Stipendiary Magistrate or two Justices of the Peace, when the sum does not exceed ten dollars.[52]

Within two years, the Indian Act of 1880 was amended again, in response to difficulties and potential disturbances in the North-West. The main provision enabled government to go beyond the Criminal Code in suppressing disorder, making incitement of Indians to riot an offence under the Act. In the Debates of 24 March 1884, Macdonald remarked that the Government found it got along "very well" with the Indians if they were left alone.[53] The first clause of the new legislation on 19 April 1884 called for imprisonment for no more than two years of anyone found guilty of having incited to riot three or more Indians, non-treaty Indians or half-breeds

> a) to make any request or demand of any agent or servant of the Government in a riotous, routous, disorderly or threatening manner, or in a manner calculated to cause a breach of peace; or
>
> b) to do an act calculated to cause a breach of the peace, ...[54]

This clause was one of Macdonald's measures intended to reduce growing unrest among Indians and half-breeds in the North-West.

The second clause for preventing violence in the North-West authorized the Superintendent-General to prohibit, through public notices and penalties for contravention, the sale, gift or other disposal of any "fixed ammunition" or "ball cartridge" to the Indians of Manitoba and the North-West Territories.[55] The Prime Minister supported this clause because the building of the Canadian Pacific Railway increased the number of sales outlets and complicated the efforts of the North-West Mounted Police to control sale of ammunition.[56] At the time the Government feared a general uprising among the Métis and Plains Indians.

Clause three of the 1884 legislation endorsed the views of British Columbia agents and clergymen opposed to celebration of the "Potlach" festival. Vankoughnet also favoured Macdonald's imposition of two to six months imprisonment for anyone found guilty of participating in either the "Potlach"or"Tawanawa" dance.

These celebrations, which local officers and missionaries described as "debauchery of the worst kind" were considered by the Deputy Superintendent-General to have "pernicious effects" upon Indians.[57] In a sense, this was a landmark amendment for it represented the first in a long series of attempts by Parliament to protect Indians from themselves as well as from unscrupulous "whites".

The fifth clause enabled Indians to assign by will property and personal effects. In 1884, the systematic division of an Indian's estate gave one-third to the widow and equal shares of the remainder to the children. In the case of minors, the twentieth clause of the 1880 Act had empowered the Superintendent-General to appoint a trustee and "to decide all questions" respecting distribution of lands, goods and chattels of a deceased Indian. By the Statute of 1880, the Superintendent-General could apply that clause at his own discretion "according to the true meaning and spirit" of the Act.[58] However, the legislation of 1884 made three main changes in the estates section: 1) it enabled an Indian to devise his property by will; 2) it gave the band partial authority for ensuring orderly descent of property by making band consent a prerequisite of the validity of the will; and 3) anyone who was further removed than second cousin or was not a person entitled to live on the reserve of the deceased Indian was excluded from the estate. Also excluded was the widow if, in the judgment of the Superintendent-General, she was not "... a woman of good moral character ... living with her husband at the date of his death ...". However, in the case of any Indian dying intestate, the old formula was retained with no consent of the band required.[59]

The ninth clause of the 1884 Act empowered the Governor-in-Council to annul the election of any Indian chief found guilty of fraud.[60] Clause eleven dealt with taxes on enfranchised Indians by adding to the seventy-fifth clause of the 1880 Act

> "and no taxes shall be levied on the real property of any Indian, acquired under the enfranchisement clauses of this Act, until the same has been declared liable to taxation by proclamation of the Governor General, published in the Canada Gazette."[61]

Experience had shown that many Indians had not taken advantage of the enfranchisement clauses for fear of being subject to taxation. Although Government viewed taxation as part of a citizen's civic responsibility, Parliament decided in 1884 to suspend

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temporarily tax assessments on the "real property" of recently enfranchised Indians.

The thirteenth and fourteenth clauses of the 1884 legislation extended the previous clauses respecting punishment of persons supplying Indians with intoxicants, and prostitution of Indian women.

> 13. The ninetieth section of the said Act is hereby amended by adding thereto the words "Any person giving or supplying an intoxicant to an Indian or non-treaty Indian on an order, verbal or written, shall be liable to all the penalties to which he would have been liable if he had sold the same without such order; and any person found drunk in the house, tent, wigwam or other domicile of an Indian, or gambling therein, and any person found within an Indian village, settlement or reserve after sunset, and who refuses to leave, after having been requested to do so by an Indian agent or chief, shall be liable to all the fines and penalties to which he would have been liable had he supplied intoxicants to Indians, and under similar process."
>
> 14. The ninety-fifth section of the said Act is hereby amended by inserting in the first, third and fourth lines, after the word "house", the words "tent or wigwam", and by adding thereto after the word "months", in the twelfth line, the words "and any Indian man or woman who keeps, frequents or is found in a disorderly house, tent or wigwam used for such a purpose, shall be liable to the same penalty or similar process."[62]

The enfranchisement provisions of the 1880 statute were also made more favourable. In 1880 an Indian needed band consent to be enfranchised. One of the obstructions to enfranchisement had been that the majority of a band was often opposed. In 1884 clause sixteen gave discretionary authority to the Superintendent-General, following an enquiry into an applicant's moral character and intelligence.[63]

On the same day when the Indian Act amendments of 1884 were passed, Royal Assent was also given to the Indian Advancement Act.[64] During the debates of April 1884, the House and Senate showed more support for proposals to advance and enfranchise the eastern tribes then for repressive legislation in the Territories. However, the Senate did show concern for laws to reduce mounting agitation in the North-West.[65] It realized that roving, discontented bands, armed with

"repeater rifles" and fixed ammunition, were inimical to peaceful settlement of the prairies. Nevertheless, the Senate gave less priority to problems in the North-West than to establishing a form of municipal government among eastern tribes.

Deputy Superintendent-General Vankoughnet advised Macdonald on 18 April that,if the ammunition clause of the 1884 Act was not put into force at once, the Government would have serious difficulty in controlling the mounting agitation among western Indians and Métis.[66] The Privy Council Committee agreed with Macdonald in 1882 that institution of a system of "borderpasses" in the Territories might eliminate raiding by both Canadian and American Indians.[67] Indian Commissioner Dewdney recommended to Macdonald on 15 February 1885 Assistant Commissioner Hayter Reed's proposal to make certain Territories officials Stipendiary Magistrates during violent outbreaks.[68]

According to Vankoughnet on 17 May 1885, clause two of the 1884 amendments only provided for prohibition of "the sale, gift or other disposal of any fixed ammunition or ball cartridge" to Indians in Manitoba. He advised that a new bill, under consideration by the Justice Department, would forbid anyone possessing "improved arms or ammunition" throughout the Territories.[69] This legislation was still under review at the end of the Rebellion, when Comptroller Fred White of the North-West Mounted Police submitted a memorandum to the Prime Minister concerning Poundmaker's request for surrender terms.[70]

In a circular dated 16 January 1885 to Agents and Superintendents in every province, Vankoughnet advised that the Department did not want to force the Advancement Act on the Indians. He instructed the officers to decide which bands were "sufficiently advanced in civilization and intelligence to have the provisions of the Act applied to them."[71] Subsequently, Agents in Nova Scotia, New Brunswick, Quebec, and Ontario replied either that the bands were incapable of a municipal form of self-government or that they refused to adopt required provisions.[72] In Manitoba however, Inspector Ebenezer McColl felt that many bands could take advantage of the Advancement Act. Nevertheless, none of the Indians at The Pas or Beren's River were capable of self-government under the new law, according to Agents Reader and Mackay.[73] Most Field Officers felt that the Indians

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were not ready for such legislation, that they wanted to retain tribal government and "non-taxable" status under the 1880 Indian Act.

The Advancement Act of 1884 provided for annual elections of councillors, regular council meetings, collection of taxes and enforcement of by-laws. In addition, clause ten gave councils certain powers not granted under the 1880 statute. Among these were

> 11. The raising of money for any or all the purposes for which the council is empowered to make by-laws aforesaid, by assessment and taxation on the lands of Indians enfranchised, or in possession of lands by location ticket in the reserve, - the valuation for assessment being made yearly in such manner and at such times as shall be appointed by the by-law in that behalf, and being subject to revision and correction by the agent, for the reserve, of the Superintendent General, and in force only after it has been submitted to him and corrected if and as he may think justice requires, and approved by him, - the tax to be imposed for the year in which the by-law is made, and not to exceed one half of one per cent, on the assessed value of the land on which it is to be paid: and if such tax be not paid at the time prescribed by the by-law, the amount thereof with the addition of one-half of one per cent thereon, may be paid by the Superintendent General to the Treasurer out of the share of the Indian in default in any moneys of the band; or if such share be insufficient to pay the same, the defaulter shall be subject to a fine equal to the deficiency for infraction of the by-law imposing the tax, by such default: Provided always, that any Indian deeming himself aggrieved by the decision of the agent, made as hereinbefore provided, may appeal to the Superintendent General, whose decision in the case shall be final.
>
> 12. The appropriation and payment to the local Agent as Treasurer by the Superintendent General of so much of the moneys of the band as may be required for defraying expenses necessary for carrying out the by-laws made by the council, including those incurred for assistance absolutely necessary for enabling the council or the agent to perform the duties assigned to them by this Act;
>
> 13. The imposition of punishment by fine or penalty or by imprisonment or both, for any infraction of or disobedience to any by-law, rule or regulation made under this Act committed by an Indian of the reserve; the fine or penalty in no case (except only for non-payment of taxes) to exceed thirty dollars, and the imprisonment in no case to exceed thirty days, - the proceedings for the imposition of such punishment to be taken in the usual summary way before a Justice of the Peace, following the procedure under the *"Act respecting the duties of Justices of the Peace out of Sessions, in relation to summary convictions and orders"*; and the amount of any such fine shall be paid over to the treasurer

of the band to which the Indian incurring it belongs, for the use of such band;

14. The amendment, repeal or re-enactment of any such by-law, by a subsequent by-law made and approved as hereinbefore provided.[74]

During the Debates on the taxation clauses, Macdonald remarked that "the Indians are quite aware of their advantage and resist the attempts of the Department of Indian Affairs to make them responsible fellow subjects."[75] Although Macdonald never intended the Act "to force white ideas on the red men prematurely", Parliament, the Canadian public and the Indians apparently thought otherwise.[76]

Macdonald knew that implementation of "civilization" policies would have to be handled carefully to avoid dissatisfaction. Although he admitted that under clause ten of the Advancement Act band councils could subdivide their reserves and perpetuate communal tenure, the Prime Minister contended that this risk had to be taken if Indians were to assume responsibilities of "civilized men."[77]

Macdonald introduced the Electoral Franchises Bill in the House on 19 March 1885, less than a week before outbreak of the North-West Rebellion.[78] By May, reluctance and fear marked the Opposition's attack on the Franchise Act which would allow "wild hordes" of western Indians to go "from a scalping party to the polls."[79] The Liberals charged that in spite of the Government's mismanagement of the Western situation, new Indian voters would favour the administration which extended the franchise to them. They also argued that Canada's Indian people, who neither paid taxes for support of the country, nor held property subject to seizure for debt or liability, and whose activities, in almost every instance, required the sanction of the Superintendent-General or his agents, were not sufficiently responsible to vote on the same basis as other citizens.[80]

Prime Minister Macdonald claimed that although Indians were incapable of handling the majority of their own affairs, some were advanced enough to share in the privileges of "white" society. Before Parliament on 4 May 1885 he staunchly proclaimed that:

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> the natives living in the older Provinces who have gone to school - and they all go to school - who are educated, who associate with white men, who are acquainted with all the principles of civilization, who carry out all the practices of civilization, who have accumulated round themselves property, who have good houses, and well furnished houses, who educate their children, who contribute to the public treasury in the same way as the whites do, should possess the franchise. They do not, certainly in the Province of Ontario, and I believe in the Province of Quebec as well, I cannot speak confidently as to the Provinces, contribute to the general assessment of the country in which they live; but they have their own assessment and their own system of taxation in their own bridges and roads, they build their own school houses; they carry on the whole system in their own way, but it is in the Indian way, and it is an efficient way. They carry out all the obligations of civilized men. If you go to any of the reserves in the older Provinces you will find that the Indians have good houses, that they and their families are well clad, the education of their children is well attended, their morals are good, their strong religious feeling is evident, You will find as good churches and as regular church goers among the red men as among the white men. You will find that in every respect they have a right to be considered as equal with the whites. In the newer Provinces, the North-West and in Manitoba, perhaps in British Columbia, they are not yet ready for the franchise; and it is my intention, when we come to the right place to move an amendment in that direction. But as regards the Indians, the educated Indian of the old Provinces, our brethern living in the same Province with us, under the same laws, and carrying out the same laws as efficiently as we do - they do not fill our prisons in as large a proportion to their numbers as the whites do; in fact we seldom hear, comparatively speaking, of Indian crime. You find them steady, respectable, law abiding and God fearing people, and I do not see why they should not have the vote.[81]

Passage of the Electoral Franchise Act on 20 July 1885 extended the vote, with certain minimal property qualification, to all adult male persons who were British subjects, either by birth or naturalization. Clause eleven gave the vote to Indians only under certain conditions:

> The following persons shall be disqualified and incompetent to vote at any election to which the act applies....:
>
> c) Indians in Manitoba, British Columbia, Keewatin and the Northwest Territories, and any Indian on any reserve elsewhere in Canada who is not in possession and occupation of a separate and distinct tract of land in such reserve, and whose improvements on such separate tract are not of the value of at least one hundred and fifty dollars, and who is not otherwise possessed of the qualifications entitling him to be registered on the list of voters under this Act.[82]

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Immediate repercussions of the 1885 Rebellion involved curtailment of annuities to rebel bands, and institution of a permit system for Indians absent from reserves.[83] These measures limited Indian rights and characterized Government's eventual return over the next decade to closer supervision of Indians.

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CHAPTER SIX

1886-1906: A Period of Disillusion

After 1879 Macdonald's Conservative Government tried various measures to make Indians self-sufficient and "civilized". However, the slow transition of western Indian bands to a self-supporting agricultural life, and the reluctance of eastern tribes to adopt "more advanced" self-governing schemes disillusioned many Indian Affairs officials. A full decade after the North-West Rebellion, Macdonald's successors sought alternatives to an "idealistic" civilization programme. Moreover, the influx of immigrants into Canada and the pragmatic settlement programs of Clifford Sifton, Liberal Minister of the Interior under Laurier from 1896 to 1905, strongly influenced the goals and activities of the Indian Department.

Restrictions, rewards and encouragement towards self-sufficiency characterized the Department's treatment of native people in western Canada after the Rebellion of 1885. A system of permits regulated movement of Indians off reserves. Some rebels did not receive further annuities until 1890-91.[1] Bands which were removed after the insurrection to Onion Lake were fed at Government expense, but were relocated on new reserves by 1887.[2] On the other hand, the Government gave cattle to Indian bands such as the Blackfoot, who had remained loyal to the Crown.[3]

Indian Commissioner Edgar Dewdney reported in 1886 that subdivision of the Indian reserves into separate lots and promotion of stock-raising among the Bloods, Peigan and Blackfeet would reduce their dependence on Government rations, and promote individualism and self-reliance.[4] Dewdney succeeded to Superintendent-General and his replacement as Commissioner, Hayter Reed, informed him in 1889 that this work had begun:

> The policy of destroying the tribal or communist system is assailed in every possible way and every effort made to implant a spirit of individual responsibility, instead.[15]

Reed added that this would not only prepare native people for enfranchisement, but would also give them the opportunity to become "a source of profit to the country." Although Reed felt that banding Indians together on reserves slowed

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their conversion into conscientious citizens, he considered that they would become "speedily down-trodden and debauched" if left together unprotected among the "white" community at this time.

Commissioner Reed advocated strict application of the Vagrant Act to discourage Indians from loitering in nearby towns. He also proposed a system of loans so Indian people could acquire conditional proprietary rights to stock and implements purchased for them by the Government.[6] Similarly, Superintendent-General Dewdney was convinced that allotment of individual properties, acquired through Indian labour or by the sale of reserve land resources, would encourage self-reliance among location ticket holders.[7]

The fifth clause of the Advancement Act in the Revised Statutes of 1886 marked one of the Conservatives' initial attempts after the Rebellion to proceed with Macdonald's civilization programme. It gave the deciding vote to the presiding official or agent at band council elections, and exemplified Government's move towards stricter management of local affairs on reserves.[8] The majority of Indian people were either ill-prepared or hesitant to adopt any form of local government which threatened to destroy their traditional tribal system. By 1897 only the Mississaugas of the Credit in Ontario and the Caughnawaga Indians of Quebec had utilized the Advancement Act to any substantial degree, although Indians on the Cowichan, Kinolith, Metlakahtla, Port Simpson and St. Peter's Reserves had adopted some terms of this Act.[9] Indian by-laws dealt primarily with public health, attendance of children at school, control of domestic animals, and moral behaviour in the tribal community.[10]

Indian suspicion of the motivations of both band councillors and Government officials limited operation of the Advancement Act. This feeling caused some of the more advanced Indians to refuse to accept its basic provisions. For instance, Peter Jones of the Mississaugas suggested to Prime Minister Macdonald in 1887 that the powers of Indian Agents to regulate band council proceedings and certify by-laws under section nine of the 1886 Act ought to be extended to the chief councillors of each band. Vankoughnet dismissed the recommendation because Agents had been given these powers to train Indians in the exercise of municipal authority. He contended that "mischievous results" might accompany such an amendment.[11]

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In 1890 Vankoughnet advised Dewdney that the authority of the Caughnawaga elected council was ineffective due to obstructive behaviour of some of its members. They refused to vote or to attend council meetings until the Department approved appointment of a band constable whom Vankoughnet considered a drunken incompetent.[12]

The Amendment Bill of March and April 1890 proposed division of reserves into electoral districts and election of councillors nominated by eligible band members. It also provided for council by-laws respecting construction, maintenance and improvement of roads or bridges on Indian lands, and allowed for dismissal of "immoral" obstructive councillors by the Superintendent-General. The Act of 16 May 1890 enacted all but the latter of these provisions.[13] This stipulation would have seriously restricted Indian management of local affairs and defeated the fundamental purpose of the Advancement Act.

During the late 1880's, the Conservative Government pursued a transitional Indian policy. It sought to protect Indian interests yet gradually induce native people to become more independent. At the same time, it decided to give the Superintendent-General and his deputies greater discretionary authority to manage Indian affairs. Efforts continued to curtail celebration of "barbaric" festivals, prostitution of native women and the ubiquitous liquor trade which impeded native "advancement". Parliament also legislated regarding band membership, protection of resources on reserves, disposal of surrendered Indian lands, and distribution of annuities to deserted families.

From February through June 1887, the Department examined a number of proposed amendments to the 1886 Indian Act. Hayter Reed, then Assistant Commissioner for the Territories, recommended to Superintendent-General White in February 1887 that all persons convicted of selling intoxicants to Indians ought to be imprisoned, not fined, under the provisions of clause ninety. He also suggested that any Indians, guilty of being intoxicated, ought to be prosecuted under clause ninety-four.[14] Vankoughnet supported Reed's proposals.[15]

On 27 May 1887 a confidential proof of the Amendment Bill was forwarded to the Deputy Minister. It contained additional stipulations which were explained in an annotated brief to Prime Minister Macdonald during the 1887 parliamentary session.[16] On 14 June, nine days before it received royal assent, Senators

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Kaulbach, Power and Abbott discussed the "extraordinary" authority given the Superintendent-General by this Bill.[17] Clause one proposed that

> The Superintendent General may, from time to time upon the report of an officer, or other person specially appointed by him to make an inquiry, determine who is or who is not a member of any band of Indians entitled to share in the property and annuities of the band; and the decision of the Superintendent General in any such matter shall be final and conclusive, subject to an appeal to the Governor in Council.[18]

Clause two authorized the Superintendent-General, his deputy, or some other person appointed by the Governor-General, to summon and examine under oath all witnesses in an Indian matter. Non-compliance with these regulations called for a penalty of no more than fourteen days imprisonment.[19]

The legislation of 1887 amended the seventy-second and seventy-third clauses of the 1886 Act, and authorized the Superintendent-General to prevent all Indian family deserters from sharing in band properties, annuities or interest moneys, and to apply those funds "towards the support" of the deserted parties.[20] Hence, Parliament dismissed its arguments of 1877 against increasing discretionary powers of the Superintendent-General and further strengthened the Department's guardian role.

Other amendments of 1887 provided better protection for Indians and Indian lands, and also applied the Act's penalties regarding liquor and prostitution to native people themselves. The fifth clause prohibited expropriation of reserve lands for railway purposes without the consent of the Governor-in-Council. According to the Senate Debates of 13 June 1887, this important regulation was not intended to prohibit construction of rights-of-way under Provincial charters, but to prevent taking more land than necessary from Indian reserves.[21] Clauses six and seven concerned seizure of wood illicitly removed from Indian Lands.[22]

Clause ten made every Indian guilty of drunkenness liable to imprisonment up to thirty days or to a fine up to thirty dollars. Intoxicated Indians could be arrested without warrant, confined until sober, and tried thereafter by any judge, police or stipendiary magistrate, justice of the peace or Indian Agent. Finally, clause eleven made both the keeper and the inmates of any "house" of prostitution equally liable to a fine of one hundred dollars or imprisonment for six months.[23]

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During the latter months of 1887, the Government considered regulations for disposal of surrendered Indian lands and for mining on Indian lands containing minerals other than coal. Subsequently, Orders-in-Council in September 1888 adopted and established the Timber, Mineral, Coal and Indian Land Regulations which governed division into lots, method of purchase, settlement, and disposal of timber from surrendered Indian lands, especially in Ontario and Quebec.[24] Perhaps the reduction in size of certain agencies through amalgamation of bands and surrender of reserves had prompted formulation of these regulations.[25] The western land market particularly welcomed the additional acreage as more Canadians and European immigrants drifted to the Prairies.

The Indian Act amendments of 22 May 1888 dealt with withdrawal of half-breeds from treaty, conveyance of land sold for taxes, exemption of Indian lands from taxation and application of the liquor laws.[26] Under the thirteenth clause of the 1886 Indian Act, many half-breeds withdrew from Treaty and received money or land scrip, then returned to accept treaty benefits. However, in 1888, they could no longer change legal status without first obtaining the Commissioner's written consent. This regulation also applied to minor unmarried children of half-breeds.[27]

An Order-in-Council of 9 August 1888 complemented the thirtieth and thirty-first clauses of the 1886 Act concerning penalties to possessors of presents, root, grain and other crops given or sold to them by Indians in Manitoba, Keewatin or the Territories:

> No band or irregular band of Indians, and no Indian of any band or irregular band in the North-West Territories may, without the consent in writing of the Indian agent for the locality, sell, barter, exchange, or give to any person or persons whomsoever, any grain, or root crops, or other produce grown on any Indian reserve in the North-West Territories, or any part of such reserve; and any such sale, barter, exchange or gift shall be absolutely null and void, unless the same be made in accordance with the provisions and regulations hereby prescribed; and any such grain, or root crops, or other produce, unlawfully in the possession of any person or persons shall be liable to be seized and taken possession of by any person acting under the authority, either general or special of the Superintendent General of Indian Affairs, and to be dealt with as the said Superintendent General or any officer or person thereunto by him authorized may direct.[28]

This strenghtened the jurisdiction of the Superintendent-General and showed the Department's lack of confidence in the business acumen of western bands.

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The Ontario-Manitoba boundary dispute is settled by the Ontario Boundary Act. Ontario is enlarged west to Lake of the Woods and north to the Albany River.

Ungava, Mackenzie, Yukon, and Franklin are established as Districts in the North-West Territories. The creation of the District of Franklin acknowledges the inclusion of the arctic islands in Canada. The Districts of Athabaska and Keewatin are enlarged.

Through 1889, the Department considered suggestions for stricter law enforcement against trespass on Indian lands, prohibition of tribal dances, prosecution for intoxication offences, application of provincial or territorial game laws to Indians, and extension of the magisterial jurisdiction of Indian Agents to include the Vagrancy Act.[29] Most of these recommendations provided the basis for the Amendment Act of 16 May 1890.[30] Clause ten added three new sections to the Indian Act. One of these, section one hundred thirty-four, prohibited all trading with Indians by Departmental employees, missionaries and school teachers. All other persons required a special written licence from the Superintendent-General.[31]

The Amendments of 1891 established a clearer definition of trespass on Indian lands, and provided stricter penalties.[32] It also added a clause concerning leasing or granting of shooting or fishing privileges on reserve.[33]

Abbott replaced Macdonald two months before the legislation of 1891 received royal assent (28 August). Indian policies of this and succeeding Conservative Governments to 1896, under John Thompson, Mackenzie Bowell and Charles Tupper, did not vary significantly from those during the latter years of Macdonald's life. The Department continued to offer charitable assistance to Indians and encouraged local enforcement of the Act's liquor, timber and trespass laws. It also attempted to curtail Indian purchases of "useless articles at excessive prices" and subsequent debts, by prohibiting any sale or barter of Indian produce without the written permission of an agent or deputy of the Superintendent-General.[34]

From 1891 through 1895-96, the Department followed a policy of closer supervision, reduced rations, and aid towards self-support among Indians in the West. In December 1894 Deputy Superintendent-General Hayter Reed recommended applying this policy throughout Canada.[35] However, Departmental efforts to consolidate its authority, protect Indian interests and promote self-improvement among Indians clashed during the 1890's.

In January 1892, a proclamation extended the Act's enfranchisement provisions to Indians in British Columbia.[36] In March, Commissioner Reed requested legislation to compel Indian children in the Territories to attend school.[37] However, Vankoughnet replied that Superintendent-General Dewdney considered these Indians

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insufficiently civilized "for such drastic measures."[38] Although compulsory school attendance and enfranchisement might encourage Indians to become more independent and better prepare them for integration with "white" society, these measures would divide Indian families, disrupt native communities and encourage further exploitation of Indian reserve resources.

Between 1892 and 1894 the Department considered Indian Act amendments regarding inheritance, trespass, desertion, liquor, and school attendance. It also reviewed the Act's provisions for expenditure of band funds for industrial schools and improvement of reserve lands. Suggestions came from the Grand Indian Council of Ontario and Quebec, the Deputy Minister of Justice Robert Sedgewick, and several other officials.[39]

Clause one in the 1894 Act (57-58 Victoria, chapter 32) amended clause twenty of the 1886 consolidated Act concerning Indian estates. It increased the discretionary authority of the Superintendent-General and provided for his sole approval before an Indian's will took effect. According to Superintendent-General Daly on 9 July 1894, band council approval was deleted because councillors often unjustifiably voted against a will for personal reasons.[40] Altogether nine subsections to the estates clause dealt with distribution of estates in cases of intestacy, administration of property of minors, widows, appointment of guardians of minors, location tickets as requisites for possession, and probates.

Clause two in 1894 amended the twenty-first clause of the Indian Act respecting who might live on a reserve, placing control of reserve occupation by non-members solely with the Superintendent-General.[41] Clause three empowered the Superintendent-General to "... lease, for the benefit of Indians engaged in occupations which interfere with their cultivating land on the reserve, and of sick, infirm or aged Indians, and of widows and orphans or neglected children, lands to which they are entitled without the same being released or surrendered."[42] In essence this amendment enabled the Superintendent-General to lease reserve lands without band consent, which had not always been forthcoming in the past.

Succeeding clauses imposed strict controls on Indian conduct and increased the powers of local agents. Clause four empowered the Superintendent-General to stop distribution of annuities, interest moneys or band properties to an Indian separated from his wife or family, either by his own conduct or by imprisonment,

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and to apply these funds to support the wife and family.[43] Clause seven permitted a constable to arrest and detain without warrant "any person or Indian found gambling, or drunk, or with intoxicants in his possession" on a reserve.[44] Clause eight empowered Indian agents to be ex officio justices of the peace for Indian Act offences and certain sections of the 1892 Criminal Code.[45]

The Government softened its stance in 1894 regarding trade with Indians. Whereas amendments in 1890 had prohibited all Departmental officials, missionaries and school teachers from trading with Indians, the 1894 legislation (clause ten) permitted this under special license of the Superintendent-General. As Vankoughnet explained in January 1891, the Department did not frame the 1890 legislation to prohibit resident missionaries, agents or school teachers from acquiring the "necessities of life" from native people in their charge.[46]

Most of the amendments of 1894 evolved under Vankoughnet's direction between 1891 and October 1893. Clause eleven, however, implemented Hayter Reed's efforts since 1892 for compulsory school attendance of Indian children, and for industrial or boarding schools for Indians.[47] Voluntary attendance at school, particularly in the North-West, had been minimal and the new legislation enabled the Department to educate Indian children without either their consent or their parents. The Governor-General did not hesitate to implement the new provisions. An Order-in-Council of November 1894 proclaimed regulations concerning industrial schools, compulsory attendance and support of Indian children.[48]

Most of the lesiglation of 1895 embodied minor yet subtle changes to the Indian Act. One change, however, had important implications. Clause one repealed section thirty-eight of the Indian Act regarding leasing of reserve lands.[49] The previous amendment had been in 1894 and enabled the Superintendent-General to lease without surrender, lands of physically disabled Indians and others who were unable to cultivate their land.[50] The new section, however, removed those conditions and permitted the Superintendent-General to lease, without surrender, the lands of "any Indian, upon his application for that purpose."[51] Superintendent-General Daly advised the House of Commons on 5 July 1895 that this change in the Act would overcome a band's refusal "through spite or pique" to surrender any land for leasing.[52]

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Other clauses of the amendments in 1895 dealt with investment and management of band moneys, elections of chiefs and headmen, distribution of band funds to enfranchised Indians, prohibition of Indian festivals, jurisdiction of Indian agents as ex-officio justices of the peace, and transfers of Indians between bands.[53]

Reed, now Deputy Superintendent-General, recognized that Departmental agents would have to exercise considerable discretion, especially respecting prohibition of Indian festivals.[54] He also applauded the self-reliant spirit of Indians who used the new system of acquiring personal loans from band funds.[55] He believed that the future of Indian youth depended on their advancement in farming or stock-raising and less on protective legislation which had discouraged their parents from responsibilities of citizenship.[56]

Reed's successor, James Smart, agreed that efforts to teach Indians agriculture and husbandry had shown some results by the mid-1890s. He maintained, however, that the Department ought to make full use of existing schools before incurring additional construction costs.[57] Smart's attitude reflected the budget-consciousness of Clifford Sifton's administration. The latter viewed Indian education as a means to encourage progressive Indians to become more self-sustaining through practical agricultural or industrial training. In his additional role as Superintendent-General of Indian Affairs, Clifford Sifton still felt that an Indian could not "go out from school, making his own way and compete with the white man [because] he [neither] had the physical, mental [nor] moral get-up to enable him to complete.[58]

Although Sifton modified the administrative structure of the Indian Department to make it more efficient, he initiated no radical departures in policy. In 1897, he ended A.M. Burgess' fourteen-year term as Deputy Minister of the Interior to confer this post upon James Smart, the Deputy Superintendent-General.[59] Smart became responsible for co-ordination of the western activities of both Departments. Under Sifton, the Indian Department contained only three branches: Accounts, Lands and Timber, and a Secretariat.[60] On Indian Commissioner Forget's advice, the Minister moved the Commissioner's office from Regina to Winnipeg, and established two new Inspectorates, in Manitoba and the Territories, to increase Ottawa's control over Indian matters on the prairies.[61]

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Sifton also reduced the numbers and salaries of Departmental personnel, and consistently refused to let Indians have any greater access to their own funds than in the past.[62] The legislation of 1898 demonstrated a move to greater government control over Indian education, morality, local government and land resources.

Most of the Indian Act amendments in 1898 concerned administration of Indian lands. Clause one made Indians "residing upon any reserve" and not "engaged in the pursuit of agriculture as their then principal means of support" liable to work on public roads.[63] Section thirty-eight, respecting leases and surrenders, was amended again to enable the Superintendent-General to dispose of "wild grass and dead or fallen timber" on Indian lands without consent of the band. The reasons for this varied, but in a brief to the Minister in 1897, Secretary John D. McLean suggested:

> There is no permanent band interest in such perishable articles, and they often constitute a serious source of danger to the reserve from fire, while to dispose of them affords industrious Indians the means to contribute to their own support ... For example, a considerable amount of timber may be killed by fire, and in order to get anything like its value, it should be disposed of promptly before decay sets in. If a surrender be required, Indians of the suspicious and obstructive class may thwart the efforts of the Department in their own and its interests.[64]

Sifton admitted to the House of Commons that he wanted "to avoid going through the formality" of obtaining council consent to sell these commodities.[65] The other sections of the legislation of 1898 concerned timber licences and sales, investment and management of Indian funds, and elections of chiefs and councillors.

Section seventy of the Act was amended again to further empower the Governor-in-Council to direct expenditures of band funds, beyond public works and school support, "... for surveys, for compensation to Indians for improvements or any interest they have in lands taken from them..."[66] The general intent of the almost yearly additions to the power of the Governor-in-Council was to overcome the apparently increasing reluctance of band councils to do what the Department deemed desirable:

> The occasion might arise when most important improvements of a public character on an Indian Reserve might be opposed and altogether prevented by the Indians. In such a case I think the Governor General in Council should have power to authorize the expenditure without the consent of the Band.

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> I think it advisable to submit expenditures for all purposes except those specially in the clause to the Band, as it will then be evident that the Superintendent-General or the Governor-in-council do not wish to act in an arbitrary way; but in cases of special need, where a Band refuses to vote money in its own interests the Governor-in-Council should have power to take it without their consent.[67]

Added to the 'Disabilities and Penalties' portion of the Act was provision for the Superintendent-General to "... stop the payment of the annuity and interest money of any Indian parent of an illegitimate child, and apply the same to the support of such child". This was also extended to female deserters.[68]

The last clause of the Amendment act of 13 June 1898 repealed clause three of the 1895 amendments (58-59 Victoria, chapter 35) and reinstituted the proportions of chiefs to band members prescribed in the Revised Statute of 1886.[69] As explained by Departmental Secretary J.D. McLean to the Minister of 11 January 1898

> For some unknown reason when the 75th Section was repealed, and the present section substituted therefor the proportion of one head chief and two second chiefs or councillors for every two hundred Indians was lowered to one for every thirty members, which the Department has found unworkable, as some bands are thereby given altogether too many Chiefs and Councillors.[70]

It did not impose any harsher penalty on chiefs or councillors deposed for dishonesty, intemperance, immorality or incompetency.

The legislation of 1898 also left undisturbed the Indian Act's enfranchisement clauses which supposedly delayed and actually barred many qualified Indians from citizenship.[71] Sifton advised Governor-General Minto in 1899 that the Department would consider Indian views as far as possible, but that "the right of Indians to control the action of the Department" would not be recognized "under any circumstances.[72]

By 1900 Canadians from Manitoba eastward and immigrants from the United States and Europe were flocking in unprecedented numbers to the prairies. This plus discovery of gold at the Pelly River in the Yukon prompted the Canadian Government in 1899 to negotiate extinguishment of Indian interests to the vast area north of Edmonton to Great Slave Lake.[73] This was Treaty Number Eight and continued the

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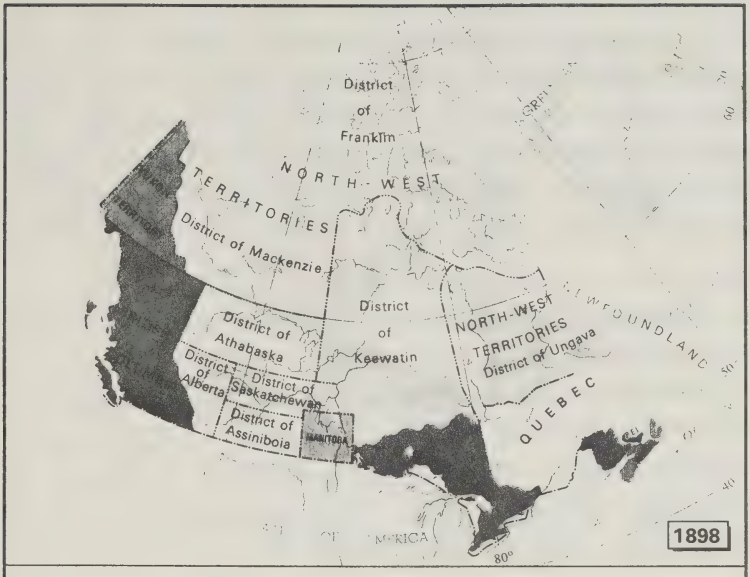

Boundaries are changed in the Districts of Mackenzie, Keewatin, Ungava, Franklin, and Yukon (1897). The District of Yukon becomes a Territory separate from the North-West Territories (1898). Quebec boundaries are extended north.

Alberta and Saskatchewan are created as provinces to make a total of nine provinces in the Dominion of Canada (1905). The District of Keewatin is transferred back to the Northwest Territories. Due to changes in adjoining areas the boundaries of the Northwest Territories are redefined (1906).

succession of numbered Indian treaties since Confederation to open the West for settlement and other purposes. Within seven years two more treaties followed. Mining activity, increased settlement and construction of a new railway in northern Ontario prompted the signing of Treaty Number Nine in 1905 with the Indians living north of the Robinson Treaties. In the same year the Provinces of Saskatchewan and Alberta were established to their present boundaries. In 1906 the Crown negotiated Treaty Number Ten with the nomadic Crees and Chipewyans of northern Saskatchewan, an area rich in minerals and wild life.[74]

Frank Pedley, Deputy Superintendent-General from 1902 to 1913, advised the Minister on 7 December 1903 that this first tide of western settlement would bring outlying bands into closer contact with "white" society and radically change the Indian way of life. He claimed that if the Department pursued a strict policy to protect Indian reserves and rights, it could reduce local frictions. Pedley contended that this would enable native people "to contemplate with equanimity the prospect of an influx which they feel assured will ... not submerge ... [but] surround them."[75]

Pedley's predecessor James Smart had complained that diminishing public sympathies had impeded implementation of the Indian Act's liquor laws.[76] Similarly, Pedley stated that prohibitive legislation for Indians surrounded by and "unrestrainedly intermingling" with communities where liquor was freely sold, could not be achieved without public sympathy and co-operation.[77] In this connection, David Laird, Indian Commissioner for the North-West Territories in 1905, discouraged Indians from seeking employment in towns or cities with all the "evils" of "civilization", and thought instead that through a system of gifts and departmental loans, "progressive" Indians could be persuaded to earn an independent living on reserves.[78]

After 1900 the Department considered more amendments respecting liquor, prostitution, desertion and celebration of tribal festivals and dances. By February 1901 the Department Law Clerk, Reginald Rimmer, had drafted a new Indian Act.[79] Indeed Commissioner Laird had suggested to Secretary McLean on 14 November 1899 that a re-consolidation of the 1886 revised statute would facilitate enforcement of Indian Laws.[80]

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A copy of the 1901 Bill revealed that it both consolidated and amended the Indian Act. The proposed Act would have substantially changed the enfranchisement clauses: clause seventy-seven proposed that the Superintendent-General would be the sole and final judge of both an Indian's qualifications for enfranchisement and his share of band funds.[81] In addition, as a direct result of social and medical problems caused by "whitemen" co-habiting "immorally" with native women, clause one hundred and nine would have prohibited marriages of Indian girls under twelve years of age.[82]

In 1903 Pedley stressed to Laird the need for quarantine provisions or similar action during outbreaks of small-pox or other contagious diseases among Indians.[83] Periodic crop failures and repeated outbreaks of diseases for over a decade had contributed to a low point in the Indian population of the North-West between 1896 and 1900.[84] Although Doctor P.H. Bryce was appointed by Sifton in 1904 to supervise the medical assistance offered to Indians and immigrants, Parliament passed no legislation respecting Indian medical assistance in its amendment to the Act in 1906.[85]

The 1906 Act (6 Edward VII, chapter 20) amended the provisions regarding management of Indian funds. The important change was in the proportion of proceeds from land sales given a band at the time of surrender. Previously it had been ten per cent:

> ... not exceeding ten per cent of the proceeds of any lands, timber as property, which may be agreed at the time of the surrender to be paid to the members of the band interested therein.[86]

The remainder of the proceeds were to be invested for the benefit of the Indians. However, the new Minister of the Interior, Frank Oliver felt a larger downpayment would encourage more surrenders:

> This we find, in practice, is very little inducement to them to deal for their lands and we find that there is a very considerable difficulty in securing their assent to any surrender. Some weeks ago, when the House was considering the estimates of the Indian Department, it was brought to the attention of the House by several members, especially from the Northwest, that there was a great and pressing need of effort being made to secure the utilization of the large areas of land held by Indians in their reserves without these reserves being of any value to the Indians and being a detriment to the settlers and to the prosperity and progress of the surrounding country.[87]

Accordingly, the section was amended to provide for distribution of up to fifty per cent of the proceeds at the time of surrender.[88] It also included more specific purposes for which money could be invested.

By 1906 the Indian Act, with all the amendments since 1886, had become too cumbersome for ready reference by Departmental Agents and judicial officers. Hence, a new consolidated Indian Act appeared in the Revised Statutes of 1906. It changed the wording of certain passages because of the provincial status given Saskatchewan and Alberta in 1905. It altered the order of the sections under the 1886 format. As well, the Indian Advancement Act, 1886, was incorporated as Part II of the Indian Act.[89] The statute consisted, therefore, of one hundred and ninety-five sections in two parts and under thirty-eight headings. Sub-sections of the previous legislation were, in many cases, re-written as sections.

The distribution of sections in the 1906 Revised Statute illustrated the shift in Departmental policies and legislation since 1886. Twenty-six sections now filled the category of "Offenses and Penalties." Sixteen sections came under "Enfranchisement," and no less than forty-six clauses dealt directly with management of Indian lands and timber resources. Since the Rebellion the Government had increased its influence over Indian moral behaviour, means of livelihood, land resources and capital funds, and had effected little legislation which gave Indians more control over their own affairs. Legislation and policy had originated from disillusionment with Macdonald's civilization programme and also from Sifton's perspective that Indian assimilation in "white" society took second place to rapid economic development.

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CHAPTER SEVEN

The Impact of Immigration and WWI: 1906-1927

In the first twelve years of the twentieth century, Canada's total population increased by almost thirty-five per cent. While there were small gains in the Atlantic provinces and about a twenty per cent increase in Ontario and Quebec, a million immigrants flooded the three prairie provinces and British Columbia. Accompanying western settlement were massive construction of railway lines and roads, emergence of cities and towns, and an insatiable demand for agriculture land. Many Indian reserves were substantially reduced in size during this time, yet Indian people did not appear to realize any social or economic benefit.

The situation was repeated after World War I with the need to re-establish thousands of returning soldiers. This resulted in passage of a third part to the Indian Act concerning Soldier Settlement.[1] This, plus the inclusion of Eskimos in 1924, and constant changes in the Indian land and enfranchisement provisions, prompted Parliament to consolidate these laws in the Revised Statute of 1927.

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By 1906 settlement in Canada was encroaching on formerly isolated reserves. Deputy-Superintendent General Pedley questioned Frank Oliver, Minister of the Interior, in November 1906 "whether or not the time has arrived for leaving... (the Indians) to the operation of the natural law which tends towards the survival of the fittest."[2] Opposing this view, Commissioner Laird contended that Indian people were ill-prepared to avoid immorality, chicanery and liquor traffic which habitually accompanied establishment of new railway and lumber towns.[3] In any event, partly to remove Indians from demoralizing influences, but probably more to make better use of "excess" reserve lands, Oliver's administration encouraged many Indian land surrenders.

By 1908, the influx of immigrants into the prairie provinces prompted the Department to modify its policies protecting undeveloped Indian reserves:

> So long as no particular harm nor inconvenience accrued from the Indians' holding vacant lands out of proportion to their requirements, and no profitable disposition thereof was possible,

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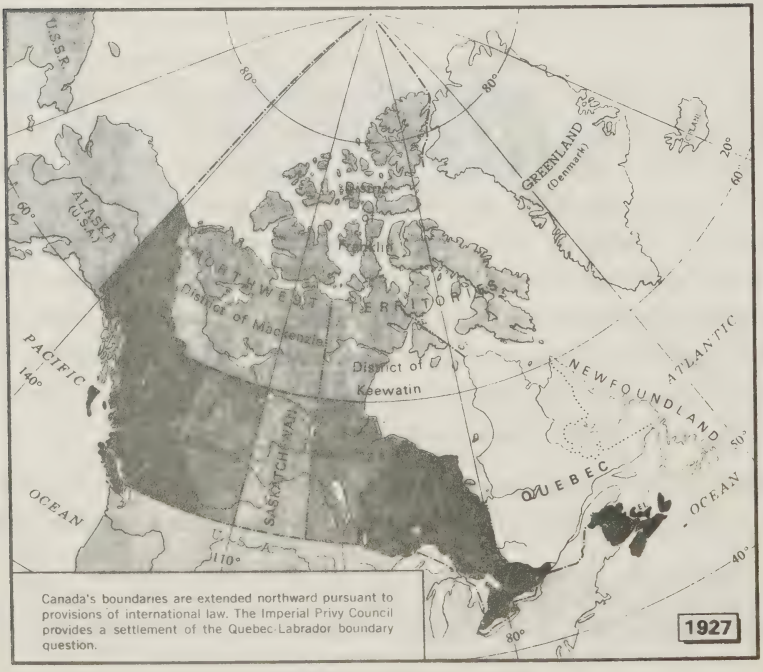
Ontario and Manitoba attain their present boundaries. Quebec is extended northward to Hudson Bay and Hudson Strait, thereby absorbing mainland Ungava. Quebec-Labrador boundary remains unsettled.



Canada's boundaries are extended northward pursuant to provisions of international law. The Imperial Privy Council provides a settlement of the Quebec-Labrador boundary question.

> the department firmly opposed any attempt to induce them to divest themselves of any part of their reserves.
>
> Conditions, however, have changed and it is now recognized that where Indians are holding tracts of farming or timber lands beyond their possible requirements and by so doing seriously impending the growth of settlement, and there is such demands as to ensure profitable sale, the product of which can be invested for the benefit of the Indians and relieve *pro tanto* the country of the burden of their maintenance, it is in the best interests of all concerned to encourage such sales.[4]

This philosophy arose partly from the attitude that government should offer only sufficient aid to enable Indians to help themselves.[5]

Remedial legislation proposed in 1908, but not enacted, concerned inheritance of Indian properties, sale of Government presents, and Indian marriage customs. The first was intended to invest the Superintendent-General with full surrogate powers over descent of Indian estates. To avoid possible breaking-up of reserves and intrusion by unwanted parties, the Department wished to curtail bequest of Indian land to heirs not entitled to live on reserve.[6] In addition, it wanted to protect livestock which had been given or loaned to Indians, from purchase by unscrupulous dealers. Cattle and horses in this case would be considered "presents" which could not be sold without written permission of the Superintendent-General.[7] Another proposal would have prohibited "licentious" tribal marriage practices in British Columbia.[8]

During Oliver's administration (1905-1911), doubt whether Indians would ever become sufficiently advanced to compete with "white" society, generated amendments in 1910 (9-10 Edward VII, chapter 28) regarding protection of Indian lands, supervision of Indian contractual obligations, and protection of goods or funds acquired through treaty.[9] There was a feeling that Indians impeded Canada's general progress. Undeveloped Indian lands interfered with the growth of urban centres, exploitation of natural resources, and expansion of local transportation facilities in the West. Commissioner Laird believed that Western reserve lands were "much in excess" of what Indians could profitably use "even when their maximum working power was reached."[10] He felt instead that Indians could use the proceeds from surrendering "idle" lands to improve their living conditions and property.[11]

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Parliament passed special legislation for some surrenders and for expropriation of reserves adjoining towns. For example, it passed the St. Peter's Reserve Act in 1916 to confirm the patents on lands surrendered at St. Peter's Reserve in 1907.[12] In addition, an Act respecting the Songhees Indian Reserve in 1911 finalized expropriation of the Songhees Reserve in Victoria, British Columbia.[13]

Indian Act legislation in 1911 significantly changed clause forty-six respecting expropriation of reserve land for public purposes. The revised clause allowed all companies, municipalities and authorities with necessary statutory power to expropriate as much reserve land as necessary for public works.[14] Oliver claimed that the whim of a band would no longer obstruct a provincially-chartered railroad company from developing a certain part of the country.[15]

Deputy Minister of Justice E.L. Newcombe pointed out to Oliver in March 1911 that the 1910 legislation respecting "recovery of possession of reserves" from trespass or adverse claim was not broad enough to cover the case of a claim to Indian lands "not reserved".[16] Hence, the first subsection of section 37A was amended in 1911.[17]

Another important amendment in 1911 concerned expropriation of reserves near or within towns or cities of not less than ten thousand people. During the Debates of 26 April, Oliver agreed to reduce this arbitrary limit to eight thousand residents.[18] He cautioned Members of Parliament that a further reduction might seriously endanger Indian interests. Therefore, in its final form, section 49A read:

> In the case of an Indian reserve which adjoins or is situated wholly or partly within an incorporated town or city having a population of not less than eight thousand, and which reserve has not been released or surrendered by the Indians, the Governor in Council may, upon the recommendation of the Superintendent General, refer to the judge of the Exchequer Court of Canada for inquiry and report the question as to whether it is expedient, having regard to the interest of the public and of the Indians of the bands for whose use the reserve is held, that the Indians should be removed from the reserve or any part of it.[19]

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Succeeding subsection outlined methods of enquiry, powers of the Court, determination of compensation, approval by Governor-in-Council and Parliament of the removal proceedings, disposition of land sale proceeds, and acquisition of new reserves under the Expropriation Act.[20]

Oliver stated on 26 April 1911 that section 49A had paramount importance because it constituted a radical departure from previous legislation concerning Indian rights and Indian land:

> For a while we believe that the Indian having a certain treaty right is entitled ordinarily to stand upon that right and get benefit of it, yet we believe that there are certain circumstances and conditions in which the Indian by standing on his treaty rights does himself an ultimate injury, as well as does an injury to the white people, whose interests are brought into immediate conjunction with the interests of the Indians.[21]

The Minister referred to British Columbia's acquisition of the Songhees Reserve, that section 49A was necessary "for the mutual protection of the actual rights of the Indians and the well-being of the white people."[22]

Both Government and Opposition members realized the policy implications of section 49A. Robert Borden (Conservative - Halifax) claimed that it overrode Indian treaty rights:

> It may be that the necessities arising out of the growth of this country, especially in the West should justify parliament in taking the extreme step now proposed, but I do not believe that this parliament or this government has any warrant to go about it in the wholesale way proposed by this Bill. The breaking of treaties with the Indians of this country - because you cannot put it lower than that - is a thing that should not be entered on with precipitation ...
>
> When you ask Parliament to pass a law under which treaties that have been sacredly observed for a hundred and fifty years shall be departed from at the instance of the Superintendent-General of Indian Affairs upon the order of a court, and without any rights to the Indians so far as this legislation shows, to be represented on that proceeding, except by the Superintendent-General of Indian Affairs, you are proposing a very extreme step. The Indians in Canada have certain rights granted to them by treaties, and heretofore, these treaties have never been departed from except with the consent of the Indians themselves. You treat the Indians as not being capable of dealing with their own affairs, you treat them as wards of the government, and you who are their guardians propose to judge for yourselves and through your own courts as to whether or not treaties, made with the Indians shall be departed from, and you do not purpose that the proposal shall come before the Parliament

> of the nation every time a treaty is to be violated. On the contrary your purpose is to create a procedure and a practice by which every one of these treaties can, without the future sanction of Parliament be departed from without any effective means being afforded the Indians to oppose the carrying out of any particular project in any particular instance.[23]

Indeed the Minister himself remarked earlier in the Debate that Government should never allow Indian rights "to become a wrong to the white man."[24] However, he maintained that private rights "must give away to the public interest."[25]

Oliver asserted that the Songhees settlement was made "under exceptional conditions." He added however that there should be a statutory provision to protect adequately both Indian interests and the welfare of white communities residing next to reserves.[26] Parliament assented to the Songhees Bill only minutes before passing the Indian Act amendments of 1911. The former authorized the unprecedented step of transferring reserve title to the Province of British Columbia.[27] To prevent the need for special legislation like the Songhees Reserve Act in the future, Parliament passed section 49A.

Following the 22 March 1911 Debate on the St. Peter's surrender, George Bradbury (Conservative - Selkirk) protested that the expropriation power given the Superintendent-General by section 49A was too arbitrary.[28] Moreover, Indians from the Six Nations Reserve petitioned the Governor-General about the new procedure of land alienation and non-recognition of treaty rights.[29] Between 1911 and 1914, other complaints about section 49A came from Indians at Sarnia and Caughnawaga.[30]

The Indian Act amendments of 1914 (4-5 George V, chapter 35) dealt with expropriation too, but more importantly with withdrawal of half-breeds from treaty. Parliament amended subsection three of section sixteen of the 1906 consolidated Act by designating the Superintendent-General, rather than the Indian Commissioner or his Assistant, to give consent to half-breed withdrawals from treaty. In addition, the fourth subsection was amended to include automatically the wife of any half-breed male withdrawing from treaty.[31] This was intended to eliminate social and legal problems when a half-breed's wife did

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not apply separately for withdrawal yet remained on reserve after discharge of her husband.[32]

The first clause of the 1914 legislation enabled the Governor-in-Council to declare any properly-equipped institution as an industrial or boarding school for Indians. The second empowered the Governor-in-Council to "expropriate" for school purposes, after appropriate compensation, land held under location ticket.[33] According to a brief which accompanied the Bill, the latter was necessary to overcome a situation that had arisen on the Six Nations Reserve:

> Usually the Department is able to secure suitable sites from the occupiers of the land by mutual agreement, but recently when land was required to extend the grounds of a certain school in the Six Nations reserve the owner refused to sell the land for the purpose and, to make matters worse, he put up a building on the land within a few feet of the school building.[34]

An amendment to section twenty-seven on estates premitted the Superintendent-General to appoint a person or persons to administer the estate of a deceased Indian, and to make regulations for its satisfactory administration.[35]

Section ninety-two was amended to allow the Superintendent-General to make sanitary regulations for prevention of disease, cleansing of streets, yards and houses, and to supply necessary medical aid, medicine and other articles and accommodation to prevent disease. It also made the Superintendent-General's authority supreme in this regard:

> In the case of any conflict between any regulation made by the Superintendent General and any rule or regulation made by any band, the regulations made by the Superintendent-General shall prevail.[36]

Up to that time the Department had difficulty inducing Indians to go to hospital for treatment. The Superintendent-General now had authority to send these people, without their consent, to receive medical attention.[37]

Clause seven of the 1914 legislation amended section one hundred and five and made both buyer and seller of Indian treaty livestock liable to prosecution.[38] Clause eight made Indian participation in dances, rodeos and exhibitions subject to Agent consent in the western provinces and territories.[39] The Department felt that these events offered "evil" temptations to Indians and disrupted work schedules on reserves.[40]

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In 1911 the Manitoba Royal Commission of Inquiry into the St. Peter's Reserve surrender dealt with the Indian Act's clause on the "majority vote" required for a surrender.[41] In 1914 the Exchequer Court of Canada received an Indian claim respecting issuance of patents for the surrendered lands. Parliament passed the St. Peter's Reserve Act in 1916 and then amended section forty-nine of the Indian Act in 1918.[42] Neither action fully resolved the surrender controversy nor clarified the interpretation and application of this important section of the Act.

By 1916 another Commissioner of inquiry (McKenna-McBride) had finished its work of adjusting the size of Indian Reserves in British Columbia.[43] The Debates of 1916 on acquisition of part of the Kitsilano Reserve at Vancouver, however, revived the old issues of British Columbia's concept of Indian title and reversionary interest in reserve lands.[44]

The Migratory Birds Convention Act of 1917 conditionally prohibited Indians in Canada from hunting all game-birds at any time of the year.[45] This became a national issue for Indians who felt it abrogated treaty hunting rights.[46]

The exigencies of World War I and the Department's policy of encouraging Indians to support themselves had a strong impact on the Indian Act amendments of 1918 and 1919. Government tried to increase domestic agriculture production. To counter pressure from the War on the national economy and foreign markets, and the demand for increased output from Canadian farms, the Borden Government in 1918 instituted a "great production campaign." For Indians this meant, under the direction of Inspector W.M. Graham, intensive cultivation of the largest possible areas of "unused" reserve lands on the prairies.[47] In 1918 Parliament amended section ninety of the Indian Act to allow the Superintendent-General to lease uncultivated reserve lands without a surrender.[48]

Arthur Meighen, who was Superintendent-General of Indian Affairs and Minister of the Interior from 1917 to 1920, explained this amendment on 23 April 1918:

> The Indian Reserves of Western Canada embrace very large areas far in excess of what they are utilizing now for productive purposes . . . We want to be able to use that land in every case; but of course, the policy of the department will be to get the consent of the band wherever possible ... in such spirit and with such methods as will not alienate their sypathies from their guardian, the Government of Canada.

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> ... We would be only too glad to have the Indian use this land if he would; production by him would be just as valuable as production by anybody else. But he will not cultivate this land, and we want to cultivate it; that is all. We shall not use it any longer than he shows a disinclination to cultivate the land himself.[49]

Meighen's comments illustrated the War's impact on domestic food production and the Government's determination to encourage Indians by law to develop their land resources.

Before 1918 Departmental efforts on enfranchisement had been thwarted by bands refusing to approve enfranchisement of Indians not in possession of location tickets.[50] In 1918 Parliament added section 122A to the Act to get around this:

> (1) If an Indian who holds no land in a reserve does not reside on a reserve and does not follow the Indian mode of life, makes application to be enfranchised, and satisfies the Superintendent General that he is self-supporting and fit to be enfranchised, and surrenders all claims whatsoever to any interest in the lands of the band to which he belongs, and accepts his share of the funds at the credit of the band including the principal of the annuities of the band, to which share he would have been entitled had he been enfranchised under the foregoing sections of the Act, in full of all claims to the property of the band, or in case the band to which he belongs has no funds or principal of annuities, surrenders all claims whatsoever to any property of the band, the Governor-in-Council may order that such Indian be enfranchised and paid his said share if any, and from the date of such order such Indian, together with his wife and unmarried minor children, shall be held to be enfranchised.
>
> (2) Any unmarried Indian women of the age of twenty-one years, and any Indian widow and her minor unmarried children, may be enfranchised in the like manner in every respect as a male Indian and his said children.
>
> (3) This section shall apply to the Indians in any part of Canada.[51]

Most Indians however, still resisted voluntary enfranchisement.

Other Amendments in 1918 and 1919 affected disposal of Indian lands. A provision on estates in 1918 stipulated that, in property cases devolved through intestacy to someone not entitled to reside on reserve, the Superintendent-General would sell the property to a band member for the benefit of the heir. Section

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forty-nine of the consolidated Act was amended to allow certification of an Indian land surrender by any person in the area with authority to take affidavits.[52] Clause one of the 1919 statute amended section forty-eight of the Act to enable the Superintendent-General to issue leases for surface rights on reserves.[53] In addition, section eighty-nine was amended to authorize the Governor-in-Council to distribute at the time of surrender up to fifty per cent of projected sale proceeds from timber and land resources.[54]

Parliament added four new sections to the Indian Act in 1919.[55] Numbered one hundred and ninety-six through one hundred and ninety-nine, they formed Part Three of the 1906 consolidated Act. This part of the Act empowered the Deputy Superintendent-General to grant Indian veterans location tickets on reserves without acquiring band council assent.[56]

The Honourable Arthur Meighen and Deputy Superintendent-General Duncan Campbell Scott agreed in 1920 that the Act's clauses on education and enfranchisement had to be changed. They felt that more Indians would become citizens under Canadian law if they were offered guidance through schooling and a more direct means of becoming enfranchised. Scott explained this to a Special Committee of the House of Commons:

> I want to get rid of the Indian problem. I do not think as a matter of fact, that this country ought to continuously protect a class of people who are able to stand alone. That is my whole point. I do not want to pass into the citizens' class people who are paupers. This is not the intention of the Bill. But after one hundred years, after being in close contact with civilization it is enervating to the individual or to a band to continue in that state of tutelage, when he or they are able to take their position as British citizens or Canadian citizens, to support themselves, and stand alone. That has been the whole purpose of Indian education and advancement since the earliest times. One of the very earliest enactments was to provide for the enfranchisement of the Indian. So it is written in our law that the Indian was eventually to become enfranchised.
>
> ... Our object is to continue until there is not a single Indian in Canada that has not been absorbed into the body politic and there is no Indian question, and no Indian Department, that is the whole object of this Bill.[57]

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Far reaching changes were made in 1920 with the education sections of the Act. Previously, the Governor-in-Council could make regulations to secure school attendance, establish industrial schools, and to apply annuities of children towards their maintenance at school. Indeed, regulations were made from time to time but it was not until 1920 that they were incorporated into the Act.[58]

Several of the Governor-in-Council's powers were transferred to the Superintendent-General. The Superintendent-General thus could provide for school transportation, prescribe standards and apply annuity and interest moneys of children towards their maintenance at school.[59] He could enforce, by means of truant officers and penalties, school attendance of all Indian children from 7 to 15 years old.[60] The Governor-in-Council, however, was still empowered to establish day schools, industrial and boarding schools.

An important feature of the Amendments in 1920 was the power Government assumed to enfranchise Indians, which showed impatience with the rate of assimilation. Scott contended that the enfranchisement process deterred many qualified Indians.[61] Section one hundred and seventy of the 1906 consolidated Act was thus amended to provide a means of quickening the process:

> The Superintendent General may appoint a Board to consist of two officers of the Department of Indian Affairs and a member of the Band to which the Indian or Indians under investigation belongs, to make enquiry and report to the fitness of any Indian or Indians to be enfranchised. The Indian member of the Board shall be nominated by the council of the Band, within thirty days after the date of notice having been given to the council, and in default of such nomination, the appointment shall be made by the Superintendent General. In the course of such enquiry it shall be the duty of the Board to take into consideration and report upon the attitude of any such Indian towards his enfranchisement, which attitude shall be a factor in determining the question of fitness. Such report shall contain a description of the land occupied by each Indian, the amount thereof and the improvements thereon, the names, ages and sex of every Indian whose interests it is anticipated will be affected, and such other information as the Superintendent General may direct such Board to obtain.[62]

If the Superintendent-General considered any Indian over twenty-one years old fit for enfranchisement, the Governor-in-Council could order that Indian to be enfranchised within two years. After that date, the Indian Act would no longer apply to him nor to his wife and minor, unmarried children.[63]

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Upon the order of enfranchisement, the Superintendent-General issued letters patent to any reserve lands the Indian held, provided that the Indian paid to band funds an amount the Superintendent-General considered to be their value. He could also order payment of the Indian's share of band funds, annuities, and calculated interest in the reserve.[64]

These provisions caused mixed reactions in both Indian and "white" communities. After January 1920 when Scott wrote Meighen about this Bill and the passage of an Act in the United States on Indian Citizenship, the Department received both letters of protest and support concerning the new Canadian legislation.[65] Indian Commissioner W.M. Graham, Ojibway Chief W.C. Jacobs, and J. Welch, an Oblate Missionary in British Columbia, welcomed the compulsory education clauses of the Bill.[66] The Chiefs of the Oka and St. Regis Bands opposed arbitrary removal of Indian children to boarding or industrial schools.[67] However, the debate on Indian education was minor compared to the controvery on the enfranchisement provisions.

An editorial in the Toronto "Globe" on 20 March 1920 questioned whether Canadian Indians were prepared for the enfranchisement provisions.[68] On 29 March the Garden River Council in Ontario petitioned the Governor-General that the enfranchisement clauses of Bill 14 detrimentally affected Indian lives, reserves and privileges.[69] The missionary at Cape Croker Reserve, Father J.C. Cadot, believed that Indian enfranchisement should be optional rather than compulsory.[70] The Abenaki Council of Odanak, Quebec, petitioned the Governor-General on 15 June 1920 that enfranchisement of members of their band - "a young and feeble people from a social point of view"- would lead to dispersal or annihilation of the tribe.[71] Thirteen days later Senator Bostock declared that because Indians felt compulsory enfranchisement would lead to breaking up of reserves, Government should not enact such legislation against their will.[72]

These pleas contrasted with W.J. Calihoo, an Indian from Michel's Reserve in Alberta:

> I have looked for this Bill to be brought to the House for the last ten years, for the more I thought of it, the more benefit I could see. The day is now here that we Indians have to paddle our own canoe.[73]

Reverend G.H. Raley, principal of the Coqualeetz Industrial Institute in the Chilliwack Valley of British Columbia, seconded Calihoo's sentiments. Raley advised Scott on 13 July that the "advanced legislation" would help to

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ameliorate conditions and better the future of Indian people through self-determination.[74] Consideration of these conflicting opinions prompted the Government to pass another amendment two years later.

A change was also required in the definition of "enfranchised Indian". Formerly,

> 'enfranchised Indian' means any Indian, his wife or minor minor unmarried child, who has received letter patent granting to him in fee simple any portion of reserve which has, upon his application for enfranchisement, been allotted to him, or to his wife and minor children, or any unmarried Indian who has received letters patent for an allotment of the reserve. (6 Edward VIII, chapter 81)

Revised, it read

> 'enfranchised Indian' means any Indian head of a family and his wife and minor children, or other Indian male or female over the age of twenty-one years in respect of whom an order of enfranchisment has been made by the Govenor-in-Council.[75]

Another important amendment in 1920 dealt with distribution of band funds to an Indian woman upon marriage to a non-Indian. Formerly she lost her status but could continue to receive annuities or a commutation of her share of band funds with band consent. In 1920 section fourteen of the 1906 Act was changed to require only the approval of the Superintendent-General.[76] Deputy Superintendent-General Scott explained this to Meighen on 12 January 1920:

> When an Indian woman marries outside the band, whether a non-treaty Indian or a white man, it is in the interest of the Department, and in her interest as well, to sever her connection wholly with the reserve and the Indian mode of life, and the purpose of this section was to enable us to commute her financial interests. The words "with the consent of the band" have in many cases been effectual in preventing his severence as some bands are selfishly interested in preventing the expenditure of their funds. The refusal to consent is only actuated by stupidity because the funds are not really in any way impaired. The amendment makes in the same direction as the proposed Enfranchisement Clauses, that is it takes away the power from unprogressive bands of preventing their members from advancing to full citizenship.[77]

On 1 July 1920 Parliament passed an Act (10-11 George V, chapter 51)

to settle all differences between the Dominion and British Columbia concerning Indian lands. Under this statute, the Governor-in-Council could order reductions or cut-offs from reserves "without surrenders ..., notwithstanding any provisions of the Indian Act to the contrary."[78] Hence, this legislation allowed the Governor-General to settle the longstanding issue of reserve allotments in British Columbia without reference to the protection afforded Indian lands by the Indian Act.

During the Debates of June 1922 on the enfranchisement and Soldier Settlement clauses of the Indian Act, ex-Superintendent-General Sir James Lougheed remarked to the Senate:

> It is not reasonable to suppose that the Canadian Government must necessarily for all time retain the obligation of looking after the Indians and maintaining them as wards of the nation. It goes without saying that once the State enters upon the responsibility of keeping people, providing for them the necessaries of life, doing the thinking and acting for them, there is a failure to develop the human facilities which are to be found in Indians as well as in other persons. Consequently my impression is, ..., that no enfranchisement will take place among the different bands of the Dominion so long as we leave to them the responsibility of taking the initiative.[79]

The Indian Act amendments of 1920 had empowered Lougheed, as Meighen's Conservative Minister of the Interior (1920-1921), to initiate arbitrary enfranchisement proceedings for Indians. However, the new Liberal Government under Mackenzie King did not agree with this, and in 1922 passed a new amendment that enfranchisement would only take place at individual or band requests.[80]

This amendment arose from controversy after the 1920 statute. Indian people generally feared that the Department would use "forced enfranchisement" to break up reserves and destroy tribal society. For example, the Six Nations claimed to be allies of the British Crown and not subjects of the Canadian Government, that they were exempt from the Indian Act's provisions on expropriation and compulsory enfranchisement.[81] This contention prompted Conservative Senator Fowler to remark in 1922:

> This Indian question is apparently becoming somewhat acute, and it is rather important. The Indians, particularly those belonging to the Six Nations, have an idea that they are not subjects of this country at all ... Now, the sooner they are taught that they are not allies of Canada, but subjects of Canada,

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> and that they are Canadian citizens so far as the moderate kind of citizenship they have, without the franchise, is concerned, the better, because we do not want any such anomaly in this country. We have troubles enough about our immigration, without having contention with our aboriginal inhabitants. It seems to me that the Indian Department has not handled those people with sufficient firmness... This is the condition now, and ... any legislation tending towards easing up on those people makes them think that they are masters of the situation, ...[82]

Charles A. Stewart, Superintendent-General from 1921 to 1926, believed that the Department would be more successful with Indian land development and citizenship policies by encouraging Indians to do things through candid agreement rather than force.[83] In addition to eliminating compulsory enfranchisment, the legislation of 1922 confirmed band control of reserve lands "whether occupied by a soldier settler or any other Indian."[84]

The Indian Act amendments in 1924 (14-15 George V, chapter 47) were also controversial. This statute placed Canadian Eskimos under the Superintendent-General of Indian Affairs. Up to this time the Federal Government had appropriated small amounts for relief when Eskimos were short of food and supplies.[85] Other than that, no services similar to those given Indians were extended to them. A question arose whether there should be a section in the Act declaring that Eskimos were Indians for administration puproses. The original proposal included "Eskimo" in the definition of "Indian" and extended to Eskimos the provisions of the Indian Act.[86] Former Prime Minister, the Honourable Arthur Meighen, objected strongly:

> I should not like to see the same policy precisely applied to the Eskimos as we have applied to the Indian.
>
> I object to nursing. I really think the nursing of our Indians has hurt them. The best policy we can adopt towards the Eskimo is to leave them alone.
>
> After seventy-five years of tutelage and nursing, ... (the Indians) are still helpless on our hands.[87]

Other members agreed, and passed the section to read:

> "The Superintendent-General of the Indian Affairs shall have charge of Eskimo Affairs"

with no mention of property or application of the Indian Act to Eskimos.[88]

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Other amendments of 1924 dealt with distribution of Indian estates, cancellation of land leases, management of band funds and enfranchisement.[89] The Superintendent-General acquired power to appoint executors for estates of deceased or insane Indians, and the practice that the widow of an intestate Indian had to be considered "of good moral character" by the Superintendent-General to receive any part of her late husband's estate, was discontinued.[90] In addition, section twenty-eight of the consolidated Act was amended to permit distribution of an estate to a deceased's nearest kin, whether Indian or not. However, it still did not allow interest in reserve lands to devolve beyond a decedent's brother or sister.

The legislation of 1924 provided a formal procedure for cancellation of land leases. It also empowered the Governor-in-Council to make loans to band members, although these loans could not exceed "one-half of the appraised value" of the borrower's landed interests.[91] Finally, the statute removed enfranchisement for an Indian woman living apart from her husband, and revived section 122A which had been added to the consolidated Act in 1918 but repealed in 1920.[92]

On 11 April 1924 Deputy Superintendent-General Scott asked Deputy Minister of Justice E.L. Newcombe for his opinion on adding a clause to the Act to prevent "lawyers" and "agitators" from collecting money from Indians to procecute claims against Government without first obtaining the Justice Minister's consent.[93] This concern arose over some American lawyers who had solicited funds from the Oneida, St. Regis, Oka and Lorette Reserves to present a claim against the State of New York for lands "which formerly belonged to the Iroquois Confederacy."[94] Subsequently, section 149A was added to the Act on 31 March 1927 empowering the Superintendent-General to impose penalties for soliciting funds from Indians without his written consent.[95]

Another amendment in 1927 allowed a provincial or dominion analyst's report of an Indian alcohol content to be used as *prima facie* evidence at a trial.[96] Another enabled the Governor-in-Council to place small capital accounts to the credit of a band instead of distributing a negligible amount of interest to every member each year.[97] Also added was a new section prohibiting acquisition and removal of grave houses, totem poles and rock-paintings from reserves without consent of the Superintendent-General. This provided a means of protecting

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their historical value.[98] The Superintendent-General could also make regulations about operation of poolrooms, dance halls and other places of amusement for Indians. Stewart explained on 15 February 1927 that although band councils could make local by-laws on these matters, the Superintendent-General's regulations would apply Canada-wide.[99]

Deputy Superintendent-General Pedley contended in 1909 that the Department could not allow any stagnation in the condition of native people.[100] Pedley's successor, Duncan Campbell Scott, argued during the next decade for a more arbitrary form of enfranchisement.[101] Certainly Superintendents-General Oliver and Mieghen both deviated from the traditional protection of Indian lands and gradual, voluntary assimilation. If assimilation of Indians was the Department's ultimate goal, protective isolation had to be minimized. The consolidated Indian Act of 1927 (Revised Statutes of Canada, Chapter 48) showed the Department's efforts since 1906 to induce Indians towards citizenship and economic self-sufficiency.

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CHAPTER EIGHT

Indian Legislation, the Depression and WWII: 1927-1946

When Parliament again consolidated all its Indian legislation in 1927 (Revised Statutes of Canada, chapter 48), Canada was enjoying a period of economic prosperity both at home and abroad. However, within two years attention focussed on world economic depression and this continued throughout the next decade until World War II. Indian Affairs policy wavered between immediate Indian integration with Canadian society and encouragement of self-sufficiency and gradual enfranchisement.

By 1938 the Indian Affairs Branch of the Department of Mines and Resources realized that many provisions of the 1927 Act were not meeting native problems adequately and began to prepare a new Indian Act. The revision process was impeded by the Second World War, but it resumed in 1946 with renewed public and government interest in social matters.

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Except for the repeal of the Indian Act's section on Eskimo affairs, the legislation of 1930 made few major amendments to the consolidated Act of 1927. Superintendent-General Charles A. Stewart advised Members of the House of Commons on 31 March 1930 that there were no Indian Affairs officials in the regions inhabited by Eskimos. He maintained that the Northwest Territories Council and Department of the Interior should control Eskimo matters.[1] Six years earlier, Stewart had supported the section of the act which placed the Superintendent-General in charge of Eskimo affairs.[2]

Minor admendments were made regarding Indian education, sale and barter of cattle and produce, and the sale of intoxicants on reserves. Subsection one of section ten of the 1927 consolidated Act was altered to allow the Superintendent-General to keep some Indian children in school up to the age of eighteen. Clauses forty and forty-one were changed to require written consent of the Indian Agent before anyone could buy or sell cattle or produce from Indians. Sections nine and

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seventeen empowered band councils to make regulations for control of public games and amusements on reserve on the Sabbath. As Superintendent-General Stewart explained, this would give bands control over drinking and "vicious practices" which often accompanied those events.[3]

A new section was added which, while not important in itself, provided an insight into the Department's concern to keep Indians clear of social vices:

> Where it is made to appear in open court that any Indian, summoned before such court, by inordinate frequenting of a poolroom either on or off an Indian reserve, misspends or wastes his time or means to the detriment of himself, his family or household, of which he is a member, the police magistrate, stipendiary magistrate, Indian agent or two justices of the peace holding such court, shall, by writing under his or their hand or hands forbid the owner or person in charge of a poolroom which such Indian is in the habit of frequenting to allow such Indian to enter such poolroom for the space of one year from the date of such notice.
>
> Any owner or person in charge of a poolroom who allows an Indian to enter a poolroom in violation of such notice, and any Indian who enters a poolroom where his admission has been so forbidden, shall be liable on summary conviction to a penalty not exceeding twenty-five dollars and costs or to imprisonment for a term not exceeding thirty days.[4]

In response to Opposition objections that this section might "open the way to persecution", Stewart replied that prosecution under this law would be up to the discretion of the magistrate or judicial officer. He added that the proper place for an Indian was not in a poolroom but "on a reserve or in a school," and that persistent loitering impaired progress towards self-sufficiency and citizenship. Stewart admitted however, that this clause was directed at only a small portion of the Indian population whose actions could not be controlled without special legislation.[5]

Charles Coote, a member of the United Farmers of Alberta, suggested that a larger issue surrounded the "poolroom amendment":

> It is possibly because we have not completed our job of educating them, and have turned them loose from the schools without providing a place for them to go .... My whole criticism is that our system does not go far enough. It does not carry the Indians up until he has reached the age of manhood or maturity.[6]

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In the 1920's, massive development of natural resources, especially in lumbering and mining, caused the three prairie provinces to demand control of their own resources. The founding provinces at Confederation had retained control of their lands, forests, and minerals, but the Dominion retained control over the resources in the North-West Territories out of which later arose the new provinces of Manitoba, Saskatchewan, and Alberta. Finally, on 30 May 1930 Parliament assented to the transfer of natural resources to these provinces.[7] Provisions were made however, for fulfillment of Indian reserve land entitlement under treaty and to enable Indians to hunt, fish, and trap for food at all times of the year. Interpretation of these latter rights was the subject of many court decisions in later years.[8]

The Indian Act was amended again in 1933 to clarify sections on truancy, buying and selling of Indian cattle and produce, making roads on reserve, penalties for hunting on reserve by non-band members, and extension of band council powers. Most important, the 1933 legislation again introduced compulsory enfranchisement, this time however with greater safeguards for Indians than had been provided in 1920. The former Act (10-11 George V, chapter 50) had enabled the Superintendent-General to begin enfranchisement proceedings for Indians without their having specifically applied for it. In 1922 the compulsory aspect was amended (12-13 George V, chapter 26) to allow enfranchisement to take place only at individual or band request. However, re-instatement of compulsory enfranchisement in 1933 now recognized treaty rights:

> Provided that no enfranchisement of any Indian or Indians shall be made under this sub-section in violation of the terms of any treaty, agreement or undertaking that may have been entered into or made between or by the Crown and the Indians of the band in question.[10]

There were numerous objections to this amendment. Opposition Member J.A. Bradette did not believe that "any body of men should be given power to pick out certain Indians who may become enfranchised and have the right to vote."[11] Caughnawaga Chief Paul Jacobs contended that "compulsory enfranchisement without holding our present rights under the Indian Act could soon lead us to complete extinction."[12] The Six Nations Indians at Brantford claimed they were "still suffering from the effects of indiscriminate and injudicious enfranchisement in the past ...."[13]

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As in 1920, Indians objected that enfranchisement opened reserve lands to fragmentation and non-Indian occupancy.[14]

Advocates of compulsory enfranchisement argued that although many Indians had the ability and aptitude to take on responsibilities of "nationalized" Canadian citizens, they refused to give up their statutory exemptions from property taxes and legal action for debt.[15] Indeed, Agent Letourneau claimed that Indians were "more than ever inclined that white people should support them."[16] By providing Indians as "wards" with benefits they would not receive as "citizens," the Act had tended to impede rather than promote citizenship and assimilation.

Legislation in 1934 (24-25 George V, chapter 29) concerned local government on reserves. Specifically, it dealt with the Order-in-Council of 12 July 1906 which had applied provisions of the Advancement Act to the Caughnawaga Reserve. Whereas the Act had provided for division of a reserve into electoral districts, the Order-in-Council made Caughnawaga Reserve a single district. However, the Order-in-Council was not founded upon any statutory authority. The 1934 statute declared it valid and amended the Indian Act to permit the Governor-in-Council to allow a reserve to form one electoral district, or no more than six, as he saw fit.[17] Refinements of this sort to the Indian Act reflected Government's ad hoc approach to Indian matters in the midst of the Depression.[18]

The Amendments of 1936 (1 Edward VIII, chapter 20) further exemplified this ad hoc approach. The first and third clauses of the legislation indicated that, in spite of the desired integration of Indian and "white" communities, the Department still wanted to keep reserve lands intact for a band. The band could henceforth purchase any reserve land which had been inherited by someone not entitled to live there.[19] With band consent, the Governor-in-Council could direct expenditure of band capital to purchase "the possessory rights of a member of the band in respect of any particular parcel of land on the reserve."

The second clause authorized the Superintendent-General to make, upon publication in the Canada Gazette, special regulations for Indians or apply certain provincial laws. Three areas of regulations were provided for: game laws, destruction of noxious weeds, prevention of plant diseases, and speed

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and operation of motor vehicles on highways within reserves.[20] Essentially, the Superintendent-General acquired the power to apply existing provincial laws to reserves as he saw fit.

The Department intended that the sixth through twelfth clauses of the 1936 legislation would establish a common standard of justice for enforcement of liquor laws. This stemmed from a feeling that informers were over-zealous in bringing Indian cases to court, because they received half of the fines levied and that prosecution of Indians on this basis lessened respect for impartial administration of the law.[21]

Other minor changes were made. Clauses four and thirteen dealt with elections on reserve, and clause five outlined the duties of the Indian Agent at band council meetings.[22]

In 1936 a major administrative restructuring of the Department transferred the Department of Indian Affairs, from the Minister of the Interior, to the Department of Mines and Resources.[23] The Minister of Mines and Resources, Thomas A. Crerar, became the Superintendent-General. Deputy Superintendent-General McGill became the Director of the Indian Affairs Branch of that Department. The Branch consisted of four Services: Field Administration, Medical Welfare and Training, Reserves and Trusts, and Records.[24] This arrangement remained unchanged until 1945 when R.A. Hoey succeeded McGill as Director and an Order-in-Council transferred the Indian Health Service to the Department of National Health and Welfare.[25]

The Indian Affairs Branch was still aware of the peculiar socio-economic and legal position of the Indian in Canadian society. It acknowledged that some Indians suffered during the Depression because some employers tended to view them as public charges who did not need steady jobs.[26] The Government searched for some means to encourage individual enterprise and especially wanted to remove "the state of dependency" into which so many were inclined to fall.[27]

The Indian Act amendments of 1938 (2 George VI, chapter 31) instituted a "revolving loan fund" for Indian people. The new clause, number 94B in the consolidated Act of 1927, enabled the Superintendent-General

> to make loans to Indian Bands, group or groups of Indians or individual Indians for the purchase of farm implements,

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> machinery, live stock, fishing and other equipment, seed grain and materials to be used in native handicrafts and to expend and loan money for the carrying out of co-operative projects on behalf of the Indians.[28]

The Minister of Finance would advance these funds to the Superintendent-General from the Consolidated Revenue Fund of Canada. Any repayments the Superintendent-General received from Indians "for aid furnished under this section" would revert to the Minister of Finance. The total amount of outstanding advances for this "revolving fund" was set at a maximum of three hundred and fifty thousand dollars.[29]

Members of the House of Commons and Senate viewed this amendment with mixed feelings. The Minister of Mines and Resources, Thomas Crerar, informed the House of Commons on 3 June 1938 that the amendment was intended "to encourage in the Indians the virtues of independence and self-reliance." He explained that up to that time Indians who received money for machinery or houses tended to regard it as a grant or gift, an attitude which did not help to develop or cultivate a sense of independence.[30]

Most Members agreed with the Minister. Indeed, Senator Dandurand considered that the amendment might help to gradully prepare the Indian for "full citizenship."[31] However, Senator Meighen had grave doubts:

> My guess is that the fund provided for by this Bill will revolve until the fund is exhausted, when the revolving will cease and the State will bear the loss of the whole amount. Unless a very extraordinary man is placed in charge of the fund, and unless he stays in charge of it for years to come, we may as well kiss good-bye to all the money right now. It will never come back. Government loans to white people, where the individual obligation always obtains, are not often repaid. How much slimmer are the prospects of repayment of money placed in a revolving fund for Indians, who are not individualists and who as a rule do not understand the meaning of an obligation! And those prospects are still slimmer when the loan is made to a group or tribe, and the obligation is a communal one, whatever that may mean. Surely the Government does not think that in these circumstances Indians will understand there is a real obligation.[32]

Ten days before this amendment received royal assent, an article in the Winnipeg Free Press read: "It may be questioned whether the native race ... will ever fit in with the white man's mode of living. No 'revolving fund' has magic to

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so remould them."[33] This exemplified the sentiments of opponents of the new clause who felt that operation of a "revolving fund" would not change Indian character or outlook as a "ward" of the Government. Nevertheless the Indian Affairs Branch established this scheme to encourage development of self-supporting, occupational projects among Indians.

The Branch also sought to ensure development of mineral and natural gas or petroleum deposits on reserves. In 1937 W.M. Cory of the Department's Legal Division decided that an amendment to the Indian Act was essential before new mining regulations could be effective.[34] Accordingly, the 1938 legislation included a clause which empowered the Superintendent-General to issue prospecting and mining leases on reserves with or without a surrender.

The second subsection of the consolidated Act's fiftieth clause was changed to provide only for "leases upon such terms as may be considered proper in the interests of the Indians and any other lessee or licensee of surface rights."[35] Discussion of this amendment in the Commons questioned Indian title to surface rights, and the province's reversionary interest in surrendered reserve lands, particularly in British Columbia.[36] How much these issues influenced the wording of the amendment is open to speculation, but by 1939 the Branch leaned towards "conservation of Indian land assets against the future needs of a steadily increasing population."[37]

During the latter half of the 1930's it was felt that increased "white" competition and diminishing wildlife threatened the livelihood of Indian hunters and trappers in northern Canada.[38] Indian Game Reserves and fur-conservation programmes were established to relieve part of the problem.[39] Later measures included an Order-in-Council on hunting practices in the Northwest Territories, and legislation on buying skins and other parts of wild animals from Indians in designated regions.[40]

In 1938 Branch officials decided to undertake a general review of the Act. The existing legislation required updating to meet new conditions, needs and objectives. In November 1938 a circular was sent to Branch field officers asking for their criticisms of the Act and proposals on how to improve it.[41] Recommendations considered during the next year concerned membership of illegitimate children, the legal definition of "Indian" and "Non-Treaty Indians," right of creditors to go on reserves, and status and commutation of annuities

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of Indian women after marriage.[42] World events of 1939, however, turned Government attention away from Indian Affairs.

In 1939 and 1940 Superintendents Hoey and Allan, Departmental Solicitor Cory, and H.G. Crowley of the Auditor General's Office reviewed and suggested revisions to different portions of the Act.[43] In 1941, Secretary MacInnes circulated a draft of the proposed new Indian Act to the Superintendents.[44] However, only one amendment (4-5 George VI, chapter 19) was introduced by Crerar and passed by Parliament that year. It enabled the Governor-in-Council to make regulations concerning Indian trade in furs and wild meat. The new section, number 42A, followed the general lines of the law respecting trade in cattle and farm produce from reserves. However, in this case, it could be applied to all Indians, on reserve or not, in all of Canada rather than the Prairie provinces and the Territories.[45]

From 1942 through 1945, Branch officials continued to discuss status and membership, the legal definition of "Indian," leasing of reserve lands on behalf of overseas Indian soldiers, and what effect Indian Act protection had on encouraging Indians to become "citizens".[46] Active Indian participation in the War seemingly promoted new interest in their situation. Certain Government officials and various organizations urged that a new Act give Indians greater voice in management of their affairs. On 14 August 1944 Crerar asserted "there is no doubt in my mind that the whole Act needs a thorough revision. That was apparent to me as long as five or six years ago .... After all, the present Act was passed many years ago when the problems of Indian administration were wholly different from what they are today."[47]

Over the next two years Government's approach to drafting a new Act, and concurrent policies, took note of representations from Indian groups.[48] In 1946, a Special Joint Parliamentary Committee was appointed to examine the Act and Indian administration in general, with the hope that Indian opinion would have some impact on formulation of a new Act and future policies.

Indian policy and legislation had remained largely in a state of suspension since 1933.[49] The Depression and World War II complicated the search for a course of action to accomplish the ultimate goal of assimilation. At the same time, Government tried to meet the needs of Indians, who were at various levels

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of "civilization" across Canada. While the Department continued to pursue measures to protect Indians and Indian lands from encroachment, it also sought to encourage more of them to become sufficiently advanced to participate in Canadian society.

Institution of arbitrary enfranchisement in 1933 showed that, like Duncan Campbell Scott thirteen years before, Superintendent-General Murphy believed that the time had arrived for Government to take the final step in making "the Indian a full citizen ... [once] he has obtained that degree of advancement which entitles him to the full responsibilities and privileges of citizenship."[50] Yet, some amendments passed between 1933 and 1941 revealed that the Canadian Government had not really deviated from the old British Indian policy of providing for "the special protection of the Indians, in his person, his property, his advancement and general well-being."[51]

It was not until after the War that a marked change occurred in the direction of Indian Affairs policy. No longer would the Department's "civilization" and "assimilation" programme be directed solely towards teaching Indians to adopt the "whiteman's mock of life" and values. In 1946 the new Minister of Mines and Resources, J. Allison Glen, declared: "The Indian, ... should retain and develop many of his native characteristics, and ... ultimately assume the full rights, and responsibilities of democratic citizenship." Glen concluded that this process could not be "unduly hurried."[52] This approach indicated that over the next few years previous policies and legislation would be reappraised. This review process culminated in the passage of a new Indian Act in 1951.

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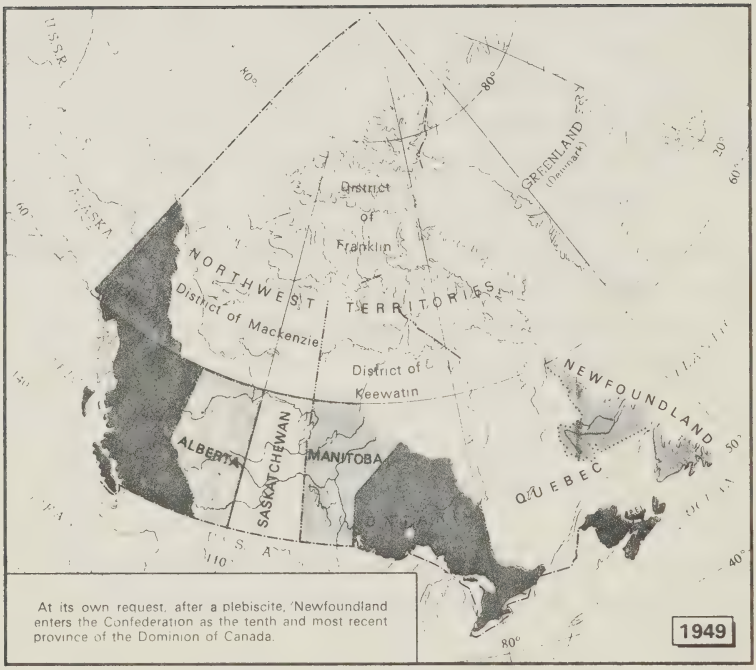
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District of Franklin
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District of Mackenzie
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ALBERTA
SASKATCHEWAN
MANITOBA
ONTARIO
QUEBEC
NEWFOUNDLAND
At its own request, after a plebiscite, Newfoundland enters the Confederation as the tenth and most recent province of the Dominion of Canada.
1949

CHAPTER NINE

The Indian Act of 1951

A new social awareness followed the Depression and World War II. Out of it emerged a general public interest in Indian problems, a concern which was reflected in the House of Commons in 1945.[1] Canadian Indian participation in both World Wars had been strong and this helped foster a new attitude towards improving Indian conditions. Within this context began a process to revise the Indian Act, to arrive at a new statute acceptable to both Indians and Government.

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In mid-1946 Parliament established a Special Joint Committee of the Senate and House of Commons with terms of reference as follows:

> ... to examine and consider the Indian Act, Chapter 98, R.S.C., 1927, and amendments thereto and suggest such amendments as they deem advisable, with authority to investigate and report on Indian administration in general and, in particular, the following matters:
>
> 1. Treaty rights and obligations.
> 2. Band membership.
> 3. Liability of Indians to pay taxes.
> 4. Enfranchisement of Indians both voluntary and involuntary.
> 5. Eligibility of Indians to vote at dominion elections.
> 6. The encroachment of white persons on Indian reserves.
> 7. The operation of Indian day and residential Schools.
> 8. And any other matter or thing pertaining to the social and economic status of Indians and their advancement, which, in the opinion of such a committee should be incorporated in the revised act.[2]

The Committee sat during three sessions of Parliament from 1946 to 1948, with considerable press coverage, and heard testimony from numerous government officials, representatives of Indian associations and other interested parties.

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An idea of the public's revived interest in Indian affairs was described to the Committee by Social Credit Member (Lethbridge) John Blackmore in June 1947:

> The Indians now have confidence we are really going to do something for them, the Canadian people as a whole are interested in the problem of Indians; they have become aware that the country has been neglected in the matter of looking after the Indians and they are anxious to remedy our shortcomings. Parliament and the country is "human rights" conscious. This is clearly shown, as we all know, by discussions in the House of Commons at the present time.[3]

On 7 June 1950 the Minister of Citizenship and Immigration, W.E. Harris, also in charge of the Indian Affairs Branch, introduced in Parliament the proposed new Act as Bill 267. A lengthy debate ensued because the proposed legislation did not reflect Committee recommendations, and the Bill was withdrawn.

In April 1951 a Special House Committee considered a new Bill, number 79, which differed in many aspects from the previous one. Bill 79 passed the House of Commons on 17 May 1951, the Senate on 5 June, and on 20 June received royal assent.

This final chapter consists of three sections: evidence gathered at the Joint Committee hearings, debates over the ensuing Bills, and finally the new Indian Act. Information and amendments to the Indian Act during the 1950's is part of the third section.

I

THE JOINT COMMITTEE HEARINGS OF 1946 TO 1948

Initially, the Committee did not intend to hear Indian testimony until after it had received evidence on administrative matters from Departmental officials. The Indian Affairs Branch had been hampered by insufficient funds and staff. According to Branch Director R.A. Hoey, the number of current headquarters personnel was less than in 1918 when it had to deal with fewer services and a smaller Indian population.[4] Then, as in 1946, regional differences in Indian conditions impaired effective policy implementation of policy and legislation.[5] Despite the emphasis on Branch hearings however, the Committee did

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hear from several Indian associations. This marked the first systematic effort by Government to consult with Indians.

The views of the North American Indian Brotherhood were presented to the Committee on 27 June 1946 by its President, Andrew Paull. The latter suggested that the Committee investigate breaches of treaty rights and that the Department's power to admit and remove band members be curtailed. He also called for Federal and provincial tax exemptions for Indians as a treaty right and abolition of all denominational schools on reserves.

The North American Indian Brotherhood recommended decentralization of the Indian Affairs Branch and future management by "provincial regional boards under a federal department or board responsible to Parliament." It believed that qualified Indians should be employed in the administration, that band councils should be empowered to manage local matters, and that bands should police their own reserves. Indian people were ready to acquire the right to vote in federal elections, and Paull asked the Committee to consider Indians electing their own member to the House of Commons. Paull also pressed for an amendment to the Railway Act, to extend the privilege of riding at half-fare to all Canadian Indians.[6]

Early in June 1946 the Chiefs of the Soloose, Coldwater and Canfort Reserves in British Columbia informed the Departmental Secretary that they did not want Andrew Paull to speak for them, that they wanted to keep the "Old Law ... Queen Victoria laid for us Indians" as amended in 1927 and 1930.[7] Ten years later, a member of the Commons contended that nothing would be done if Government waited for perfect measures to be formulated, because there was a great difference in opinion and interests among Indians themselves.[8]

The Indian Association of Alberta also submitted a brief to the Committee in 1946. The Association urged that a Royal Commission of Inquiry be appointed without delay to investigate Indian needs, and asked for a complete revision of the Indian Act with consideration given to Indian proposals.[9] In particular, the Alberta Indians objected to section eighteen of the consolidated Indian Act which gave the Superintendent-General final authority over band membership. They recommended that the section be amended to require band majority assent.

At their meeting in June 1945 Association delegates had passed a resolution that "all persons and their families expelled from Treaty under Section 18

be restored to Band Rolls and complete Treaty privileges at once."[10] It was also resolved that Chiefs and Councillors ought to receive payments in addition to treaty. The Association felt that reserve residents and band members should be entitled to full royalty rights to any minerals on reserves. In addition, they wanted a clause in the Act which exempted all treaty Indians from military services overseas, and sought affirmation of all treaty rights and privileges.[11]

By comparison the recommendations and brief of the Okanagan Society for the Revival of Indian Arts and Crafts called for a long range policy aimed at "the total emancipation of the Indian, at his own pace and as he wishes,..."[12] The Society proposed that the Indian Branch be reorganized to resemble the United States Indian Service.[13] It also recommended that responsibility for Indian education be transferred to the provinces "in order to gain some equality for the Indians in the places where they live."[14]

The Okanagan Society also called for the Indian vote immediately without any qualification.[15] It quoted a "prominent Vancouver Island Indian" who had declared: "The real need is for an Indian or a white man not tied up with any other office, to represent our point of view in parliament. As it is now, we are never notified of any change or amendments until they come up and are passed in the House."[16] Alberta Millar, the Society's President, felt that this plan for separate representation would perpetuate isolation of native people from the Canadian community, yet she conceded that it was the only feasible way to have Indians heard in Parliament.[17]

During 1946 numerous bands submitted proposals to the Committee. For the most part, they opposed compulsory enfranchisement, taxation, and called for stricter adherence to treaty provisions. The brief prepared by the United Native Farmers' Organization of the Stahlo Tribe of Sardis, British Columbia, recommended that the Indian Act be renamed the "Native Canadian Act."[18] The Songhees band suggested that Indian health and educational services be placed under provincial jurisdiction.[19]

In 1947 the Special Joint Committee heard from several bands and associations, including some from the year before. The 1946 hearings had not focused on the Indian Act. This year the Committee placed less emphasis on the general administration of Indian Affairs.

In April, John Calihoo, President of the Indian Association of Alberta, commented:

> We believe as an association that the revised Indian Act must be upon broad principles of human justice. It must, we know, provide for the development of the Indian people of Canada. In the development of the people we believe that the new Act must place more and more responsibility upon our chiefs and councils to act as governing bodies. For example, the great and arbitrary powers of the superintendent-general must be limited and more opportunity for appeal from such decisions provided.[20]

Calihoo wanted a relaxation of the Act's permit system which required an Agent's written permission for western Indians to sell their produce and livestock: "A man must learn the value of his own work. He must learn the responsibility of doing business for himself and of taking new responsibilities for his debts or his credits."[21] According to an Article in the Toronto Globe and Mail on 25 June 1947, Branch Director Hoey felt that advanced Indian band councils in Western Canada should be able to issue sales permits to band members.[22]

Calihoo also urged a number of changes in education, including provision for vocational training, adult education and special courses to enable Indians to take positions in the Indian Affairs Branch. He added that the Association was opposed to enfranchisement, voluntary or involuntary: "Involuntary enfranchisement must be abolished and those who had gone that route should be restored to the band lists". He also urged that chiefs and headmen be empowered to make decisions on band membership:

> At the time of the treaties chiefs and headmen were judged to be competent to decide band membership. They should today, acting upon the expressed will of their bands, be the sole judge of who may, or who may not, be a member of their bands. We do not want to bring new people into treaty; we want to see those restored who have been deprived of their treaty rights in our province.[23]

On 21 April 1947 Chief Yellowfly, a spokesman for the unaffiliated Indians of Alberta, presented his views on the relationship between the treaties and the Indian Act:

> The first question is why is there an Indian Act. In those early days a peculiar situation existed. The white man did not acquire the Indian and his lands through conquest, the white man acquired the now called Canadian Indian and their country by mutual agreement as is manifest in the Indian treaties.

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> While the Indian certainly had a culture or civilization of his own (the terms are used loosely and synonymously) he had no codified customs or what we call laws. The white man, who was the immigrant, brought with him culture, his codified customs or laws. In those early days the main problem, primarily was the "acculturation" of the Indians.
>
> In view of this our contentions are as follows. The Indian Act, apart from its relationship to the treaties, is in its simplest form and purpose a codified sociological affair. We believe that fundamentally the object of the Indian Act is twofold. Firstly, the Crown through the treaties made certain promises to the Indian people. In order to implement those promises it was necessary to legislate or create an Act respecting Indians, and the treaties. Secondly, to enact laws designed to protect and guide the Indian during the process of his adoption and assimilation of the culture which the Indian had to assume and accept.
>
> The assimilation by the Indian of this so-called western culture cannot be accomplished by regulation alone, but must be done in a sympathetic, understanding and qualified manner, treating the Indians as fellow Canadians with a problem to attack, not merely as a bunch of savages who must be subjugated and regimented in order to get them to do anything.
>
> To-day the conditions are different from what they were in those early days. To-day regimentation and economic frustration tend to create an attitude of dependency on the part of the Indian; this results in feelings of inferiority and inadequacy.[24]

Chief Yellowfly made several recommendations. He urged that a distinction be made between tribal and personal property, and that the latter be under the control and managment of the individual Indian to develop or dispose as he saw it. Moreover, he questioned the call for greater autonomy for elected band councils and noted a number of situations in which autonomy might prove inadvisable. Finally, he questioned the value of teaching a non-Indian curriculum in Indian schools, and of teaching the same curriculum throughout the country where needs of various bands were quite different.[25]

The Appendices to the Minutes of Evidence for 21 April 1947 contained a report by Justice Macdonald of the Supreme Court of Alberta which also dealt with the correlation between treaty provisions and the Indian Act:

> An Indian treaty, or for that matter any formal arrangement entered into with a primitive and unlettered people, should not be construed according to strict or technical

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> rules of construction. So far as it is reasonably possible, it should be read in the sense in which it is understood by Indians themselves.
>
> ... The Indian Act is loosely drawn and is replete with inconsistencies. I venture to say that flexibility rather than rigidity and elasticity rather than a strict and narrow view should govern its interpretation.[26]

The Indian Association of Alberta's detailed brief was also appended to the Minutes. Thirty-five of the brief's seventy-six points specifically concerned the Indian Act. One particular criticism analyzed the dual responsibilities of the Superintendent-General:

> The position of the Superintendent General is an especially anomalous one, in that the Act purports to require him to act as agent for the Crown, and also as representative of the Indians. It is true that theoretically, Indians are wards of the Crown, and as such, enjoy the benefits and advantages which the Crown may afford and extend to them through its agents. To this extent, the Superintendent General, as agent of the Crown, may be deemed to be in a position in which he is able to extend such benefits. But there are cases in which a *cestui que trust*, i.e. the person to benefit from the existence of the trust (in the position of which the Indians may be deemed to be) are entitled to advice and services apart altogether from those to it by a trustee (in this case, the Crown). One of the principal difficulties appears to have arisen in Indian Affairs because the same person has sought to act and represent the interest of both the Crown and the Indians (the trustee and the *cestui que trust*). The result has been that the Superintendent General, who has been placed in this inconsistent position, has found it impossible to advance the interests of both parties at the same time. He has, therefore, leaned heavily in favour of the Crown, it being the stronger, more vocal and the more affluent of the two parties.[27]

The largest number of criticisms and recommendations dealt with the role of the Superintendent-General vis-à-vis band government. The brief suggested that the Superintendent-General's "wide and discretionary powers" under the Act be vested in the Chiefs and Councillors. These powers included determination of the form of council and the regulations it could pass, determination of band membership, and management of band funds and reserve lands. The Association also recommended that the power to make regulations for sale of produce and disposal and descent of property should either pass to band councils or be subject to legal appeal.28

The Association urged that enfranchisement ought to be voluntary, on an individual basis and only upon application: "The Indian's birthright is his preferred position under Treaty, and the rights deriving therefrom cannot and should not be interfered with, except upon the special application of the individual concerned."[29]

As early as 1944, Doctor J.H. Jacobs of Caughnawaga had called for a statutory amendment to facilitate appointment of Indian personnel to the Indian Affairs Branch.[30] In 1947 the Union of Saskatchewan Indians advocated representation of Indian people in Parliament on a non-political basis. Indian demands for representation in the Branch, Civil Service and Parliament showed their desire to have more control over administration of their own affairs.[31]

The submission of the Saskatchewan Indians matched closely the views, criticisms and recommendations of the Alberta Association. The Union not only demanded increased autonomy for chiefs and councillors, but also diminished authority for Indian Affairs officials at Ottawa. It re-emphasized Indian concern for protection of treaty rights and their opposition to enfranchisement.[32]

The Native Brotherhood of British Columbia, represented by Reverend Peter Kelly, submitted a brief in 1947 which dealt with the principal questions of the Committee's terms of reference. The Brotherhood recommended that membership be determined by bands.[33] It regarded taxation of native people as unjust because "they have no voice in the affairs of the country; they are treated as wards and minors."[34] The Brotherhood felt that enfranchisement should not be a requirement for attaining rights of citizenship, and requested parliamentary representation similar to that of the Maoris in New Zealand. It recommended that Indian education be nondenominational and that the present system be altered to provide greater opportunities for Indians to attend high school and university. Finally, the Brotherhood concluded that Indians should assist in framing and drafting amendments to the Act.[35]

According to an article in The Vancouver Daily Province on 1 May 1947, Peter Kelly told the Committee there were three kinds of Indians: those who took pride they were Indians, insisted upon remaining "wards of the Government" and "did not want any part of progress"; those who wanted the advantages, but not the responsibilities of civilization; and those who recognized the price of progress but were prepared to shoulder the responsibility.[36] Kelly's views

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were reiterated by the Six Nations and other Ontario Indians.

Various factions of the Six Nations contended that they were independent allies and nations within a nation. The hereditary chiefs demanded abolition of the Indian Act. The representative of the elected council, on the other hand, suggested certain amendments and changes in policy.[37]

The Caughnawaga Indians stressed recognition of treaty rights. In 1942 their Council had requested that their old tribal laws be restored in place of the Act, because "we ask nothing more than a right to enjoy peace and freedom as our forefathers ...."[38] They demanded "the restoration of our primordial rights, the respection and fulfillment of treaty obligations, [and] the recognition as a sovereign nation."[39] They charged that the Act "is too dictatorial and the powers vested in the Indian agent and superintendent-general are too arbitrary and autocratic, ..."[40] They wanted the Act abolished.

The St. Regis Indians expressed similar feelings in 1946. A year later, they reitereated their position to the Committee:

> With one accord, the chiefs and members of our tribe want the 'Indian Act' taken away from our reservation. This act for the compulsory enfranchisement of the Indians, not only violates our sacred agreements and treaties but while it stands - there is no security of the Indian home.[41]

Other Ontario Indians emphasized honouring the treaties, urged band control of membership, and sought freedom from taxation and expropriation.[42] They differed, however, on the question of whether the provincial or federal government should have responsibility for Indian education and whether or not church-operated schools should continue.[43]

Both the submission of the Indian Association of Manitoba and the brief of the Northwest Angle Treaty Indians focused on treaty promises. They too contended that their treaties had been violated. The Association resolved that the Indian Act be abolished and tax exemptions restored to Indians.[44]

Two pre-eminent anthropologists, T.W. McIlwraith and Diamond Jenness, also testified at the 1947 hearings. Neither made any specific recommendations regarding the Act, but both viewed the reserve system as the single greatest obstacle to Indians attaining social and economic equality with the Canadian community. According to one Toronto Globe and Mail reporter, McIlwraith told the Committee that future government policy would have to take into account that "Indians slowly or rapidly are going to be drawn into the white man's way of life."[45]

Jenness suggested a plan which would abolish, within twenty-five years, separate political and social status for Indians:

> 1. Change the present Indian educational system by abolishing separate Indian schools and placing Indian children in the regular provincial schools.
>
> 2. Include the Indians (and Eskimos) in all 'Reconstruction' measures, e.g. those dealing with unemployment, public health, health insurance and other phases of social security.
>
> 3. Appoint immediately a commission of three to study the various Indian reservations throughout the Dominion and to advise on the best means of abolishing them, of enfranchising the inhabitants and giving them an economic status comparable with that of their white neighbours.
>
> 4. Increase the educational facilities of the migratory northern Indians...[46]

Agent A.D. Moore from Deseronto had written to the Minister in January 1946 that "it did not appear too big a task for this country to absorb the entire Indian population within the space of four or five generations, in the same manner as it absorbs European races."[47] Jenness supported this contention by drawing upon examples from the Eskimos of Greenland and Siberia, the Maoris of New Zealand and other groups.

In 1947 the Committee heard evidence from the American Associate Commissioner of Indian Affairs, the Director of Indian Health Services, a large number of Canadian Government officials, interested organizations, churchmen and unaffiliated Indians. A sub-committee investigated the situation in the Maritimes where the Branch "had done much to improve the social and economic status of the Indians" since 1940.[48] Numerous briefs were accepted and over two thousand pages of minutes and proceedings printed.

The Commissioners made twenty-six recommendations in their fourth official report to the House of Commons and Senate on 10 July 1947. Most related to the administration of the Department. As a means of dealing with the grievances of Treaty Indians, the Committee suggested.

> That a Commission, in the nature of a Claims Commission, be set up with the least possible delay to enquiry into the terms of all Indian treaties, ..., and to appraise and settle in a just and equitable manner any claims or grievances arising thereunder.[49]

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The questions of band membership and enfranchisement, however, were left for further consideration during the 1948 session.

The Committee recommended that the matter of Indian education be given further consideration. It suggested that immediate steps be taken to place educational matters entirely under the jurisdiction of the Branch. It also urged that hospitals and nursing stations be built in the North and that statutory provisions be made for the care of aged, infirmed and blind Indians.[50]

The Committee reconvened in 1948 with the same terms of reference as in 1946 and 1947. It held less meetings, heard fewer witnesses, and held many private sessions. Consideration was given to the recommendations and suggestions advanced during the previous sessions. The printed Minutes of Evidence contain little record of the discussions which took place.

The Committee made two substantive reports. On 6 May 1948 it recommended that voting privileges in Federal elections be granted to Indians.[51] On 22 June 1948, it submitted its recommendations regarding the Indian Act. Many anachronisms, anomalies, and contradictions were found in the Act:

> Your Committee deems it advisable that, with few exceptions, all sections of the Act be either repealed or amended. The Law Officers of the Crown would, of course, need to make other necessary and consequential revisions and rearrangements of the Act which, when thus revised, should be presented to Parliament as soon as possible, but not later than the next session.
>
> Your Committee recommends that immediately Parliament next reassembles a Special Joint Committee be constituted with powers similar to those granted your Committee on 9th February last and that there be referred to the said Special Committee the draft Bill to revise the Indian Act presently before the Law Officers of the Crown.[52]

The Committee observed that revisions were necessary "to make possible the gradual transition of Indians from wardship to citizenship and to help them to advance themselves."[53]

The report also contained proposals which, although they dealt with the Act, were not within the 1946 terms of reference. The Committee nevertheless recommended:

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(a) That the revised Act contain provisions to protect from injustice and exploitation such Indians as are not sufficiently advanced to manage their own affairs.

(b) That Indian women of the full age of 21 years be granted the right to vote for the purpose of electing Band Councillors and at such other times as the members of the band are required to decide a matter by voting thereon;

(c) That greater responsibility and more progressive measures of self government of Reserve and Band affairs be granted to Band Councils, to assume and carry out such responsibilities;

(d) That financial assistance be granted to Band Councils to enable them to undertake, under supervision, projects for the physical and economic betterment of the Band members;

(e) That such Reserves as become sufficiently advanced be then recommended for incorporation with the terms of the Municipal Acts of the province in which they are situate;

(f) That the offence and penalty sections of the Indian Act be made equitable and brought into conformity with similar sections in the Criminal Code or other statutes;

(g) That the Indians be accorded the same rights and be liable to the same penalties as others with regard to the consumption of intoxicating beverages on licensed premises, but there shall be no manufacture, sale or consumption, in or on a Reserve, of "intoxicants" within the meaning of the Indian Act;

(h) That it be the duty and responsibility of all officials dealing with Indians to assist them to attain the full rights and to assume the responsibilities of Canadian citizenship.[54]

The Committee's 22 June 1948 report contained a number of suggestions. It proposed that in order to resolve the question of band membership, statutory definition of "Indian" had to be redefined according to present conditions. The proposal reinforced Departmental Solicitor Cory's earlier conviction that the Act's legal definition of "Indians" had to be changed to remove a great deal of administrative difficulty.[55] The Committee also recommended that the Act's sections on taxation and enfranchisement be clarified. It advocated, however, that the liability of Indians to pay tax on income earned off reserve should be continued.

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The Committee felt that the privilege of voting in federal elections would help encourage young Indians to take an interest in public affairs, and foster a greater appreciation of Indian problems by the general public.[56] It advised the Commons and Senate that a revised Indian Act should prohibit non-Indians from trespassing on reserves, and recommended education revisions and pensions for Indians.[57]

The Committee supported establishment of a Select Standing Committee on Indian Affairs, in conjunction with the appointment of Advisory Boards, to ensure better administration of the Indian Act.[58] While it anticipated eventual Indian assimilation and the need to lessen their special protection, it still recognized that Canada had a "moral responsibility" and "legal obligation" to provide Indians with all necessary social services.[59]

In its final report, the Committee advocated co-operation between Dominion and Provincial officials "to bring about the future economic assimilation of Indians into the body politic."[60] The Committee recommended that the next Dominion-Provincial Conference consider matters of Indian education, health and social services, fur conservation and development of traplines, provincial fish and game laws, provincial liquor legislation, and validity of Indian marriages. It suggested that financial arrangements be made to bring Indians under provincial programmes and legislation to encourage more Indians to participate in the community.[61] The Indian Act amendments of 1927 and 1930 had already made moves in this direction, in particular the application of certain provincial laws to Indians and reserves.

The Minister of Citizenship and Immigration, W.E. Harris, introduced the proposed Act as Bill 267 on 7 June 1950. Copies were sent simultaneously to agents and bands for comment with passage by Parliament scheduled to take place at the end of the month. It was obvious to many Members, the press and Indians that there was not enough time for consultations with native people. Approximately two weeks was insufficient for them to consider the Bill and make suggestions. Their recommendations could not be incorporated into the Draft Bill before the session ended.[62]

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II

BILL 267 AND BILL 79

The main points of Bill 267 were a new definition of "Indian", creation of an Indian Register to facilitate determination of Indian status and band membership, and clarification and consolidation of many sections which had become extremely cumbersome over the years.[63] These included the sections on land and money management, administration of estates and local government.

The Bill liberalized the 1927 Act's liquor laws on the Special Joint Committee's recommendation that Indians "be accorded the same rights and be liable to the same penalties as others with regard to the consumption of intoxicating beverages on licensed premises."[64] Despite Indian protests at the Committee hearings, the 1950 Bill retained an "involuntary enfranchisement" clause. It also contained "objectionable" clauses which concerned Government expropriation of reserve lands and exclusion of future "quarter-bloods" from Indian status and band membership.[65]

Both Indians and the Opposition demanded that consideration of Bill 267 be held over until the next parliamentary session. More debate ensued over the Bill's content than over its late introduction to the House. John Blackmore, the Social Credit Member for Lethbridge, Alberta, complained that the Bill showed little sign of the Committee's three years of hard work: "I look into the bill, but ... am sorry to say that I have found no evidence of anything in the bill to help the Indians to help themselves beyond what we had in the old act."[66] He questioned the Minister's failure to include many of the Committee's recommendations in the Bill, such as establishment of a claims commission and a formula for the gradual but continuous transition of Indians "from wardship to citizenship."[67]

The Minister outlined the general intent of the Bill in terms of the former and current goals of Indian Affairs policy and legislation:

> The underlying principles of Indian legislation through the years have been protection and advancement of the Indian population. In the earlier period the main emphasis was on protection. But as the Indians become more self-reliant and capable of successfully adapting themselves to modern conditions, more emphasis is being laid on greater participation and responsibility by Indians in the conduct

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> of their own affairs. Indeed, it may be said that ever since confederation the underlying purpose of Indian administration has been to prepare the Indians for full citizenship with the same rights and responsibilities as those enjoyed and accepted by other members of the community. This aim has not been lost sight of in the preparation of the bill.
>
> The ultimate goal of our Indian policy is the integration of the Indians into the general life and economy of the country. It is recognized, however, that during a temporary transition period of varying length, depending upon the circumstances and stage of development of different bands, special treatment and legislation are necessary.
>
> At the same time it is not claimed that the bill will provide an immediate solution to all the problems of the Indians. The bill is what it purports to be, a revision of the Indian Act based on an appraisal of conditions as they really are and a re-examination of the provisions of the present act in the light of these conditions, a bill which modernizes and improves existing legislation.[68]

The overall aim of this Bill differed little from Glen's approach in 1946. Four years later, however, many Indians equated "integration" with "assimilation" and strongly opposed that objective.[69]

To "friends of the Indians", Bill 267 was a "vast disappointment."[70] Conservative Member John Diefenbaker denounced the Bill as merely an alteration of some of the provisions of the Indian Act to make administrative officials more powerful than they every had been since 1880.[71] He condemned the Bill as contradicting the recommendations of the Special Joint Committee of 1946-48.

Bill 267 was ultimately withdrawn with the intention of redrafting it and introducing a new Bill the next session. Plans were also made for a meeting with various Indian representatives at the time of its re-introduction to Parliament. This was in line with Prime Minister St. Laurent's statement on 5 May 1950:

> The department felt .... that it would be desirable that the bill be given first reading and be distributed, and then that a sufficient lapse of time be allowed so interested chiefs and other members of their bands may see what it contains and make representations ... If it appeared that they would prefer not to have it adopted at this session but rather to have further discussions with them and further consideration of the legislation, their views would be given sympathetic consideration.[72]

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The meeting took place in Ottawa between 28 February and 3 March 1951. In attendance were nineteen representatives, five from Ontario, four from British Columbia, three from Saskatchewan, two from Manitoba, Alberta, and Quebec, and one from the Maritimes. In addition, the Minister and the Deputy Minister attended all the meetings.

A summary of these proceedings, appended to the House of Commons Debates of 16 March 1951, revealed that "there was unanimous support for 103 sections of the bill. Opinions varied with respect to the remaining sections .... 118 sections were supported by the majority of those present; only 6 sections were opposed by a majority of the representatives and of these, 2 were unanimously opposed.[73] Although Senator Reid corroborated these official figures on 23 May 1951, Harris declared earlier that only four sections were opposed by a majority of the Indians present.[74] Two preliminary reports also differed on these statistics, but contained lists of the sections opposed by one or more of the representatives.[75]

The two sections unanimously opposed, numbers eighty-six and one hundred and twelve respectively, concerned tax exemptions and enfranchisement. Indian representatives thought the former did not go far enough in providing tax exemptions for Indians. They argued that voting privileges under the Dominion Elections Act should not be conditional upon waiving their tax exemption.[76] They all objected to involuntary enfranchisement based upon the findings of a Board of Inquiry.

According to the official summary of the proceedings of the conference, four of the six sections opposed by a majority of the representatives concerned sale and possession of intoxicants. The Indians offered three alternatives: continuation of prohibition; application of provincial laws to Indians; and a compromise measure, suggested in section ninety-five, which would allow Indians to consume intoxicants in public places according to provincial laws, but not permit them to take liquor onto a reserve.[77] The conference reached no consensus on the matter.

Fewer than six representatives objected to the provisions concerning persons not entitled to be registered as "Indians", possession of reserve lands under the allotment system, management of Indian funds, composition and tenure of Band Councils, and the required percentage of assenting band votes for individual

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enfranchisement.[78] Opposition to these sections generally reflected band or regional interests and localized suspicion of a particular law:

> It was evident from the discussion that the problem of Indian affairs varied greatly from reserve to reserve. It was recognized that the Indians of the several provinces appeared to have differing rights and experiences, and that these differences accounted for the variety of viewpoints expressed towards particular sections of the bill.[79]

The Minister noted that the most important Indian concerns were treaties and treaty rights.[80] The Indians were informed that while changes might not be made in all cases where they had objections, their representations would receive Parliament's attention during the latter stages of the Indian bill.[81]

Harris told the Commons that the Indians wanted to retain their privileges yet be completely free of government interference. The Minister concluded that the problem confronting the Branch was how "to maintain the balance of administration of the Indian Act in such a way as to give self-determination and self-government as the circumstances may warrant to all Indians in Canada but ... in the meantime ... have the legislative authority to afford any necessary protection and assistance."[82]

An important consideration was that these Indian consultation meetings were the first ones ever held. Opposition Member Douglas Harkness noted this fact in the House on 2 April 1951:

> I believe the steps taken to obtain the views of the Indians were extremely important as far as the psychological effect upon the Indians themselves was concerned. They feel they are in on the thing now, that they have been consulted, and that some weight has been given their opinions. If any Indian act is to work I think one of the essentials is that the Indians themselves have some confidence in it, and are able to feel that they had a hand in framing it.[83]

His statement reflected public feeling in 1946 that the Act had overlooked the potential and special aptitudes of Indians, that they would fall into a state of decadence unless they were treated with greater understanding, and that the future of native people would be decided by themselves.[84]

On 2 April 1951 a Special House Committee was appointed to consider the new Bill, number 79. The Committee convened between April 12 and 30. It made

few changes to the Bill, but disagreed with a number of sections. Rather than prolong debate on the sections under dispute, the Committee returned the Bill to the House on 30 April with the proviso "that further consideration be given to the Indian Act in two years time."[85] Harris claimed in the Debates of 15 May 1951 that the amendments made by the House Committee were of a legal nature, directed towards making the Act clearer and its administration simpler. He contended, moreover, that in every instance the Indians were granted greater opportunity for self-government.[86]

After three consecutive days of debate, the House passed the Bill on 17 May 1951. On 5 June 1951 it was sanctioned by the Senate and on 20 June received royal assent.

III

THE INDIAN ACT, R.S.C. 1952, c. 149

The new Indian Act did not differ in many respects from previous legislation. The main elements of the earliest Dominion legislation, i.e. protection of Indian lands from alienation and Indian property from depredation, provision for a form of local government, methods of ending Indian status, were preserved intact.

However, not since the 1876 Act had the powers of the Superintendent-General or Minister appeared so limited. Under the new Act, the Minister's jurisdiction was reduced to a "supervisory role, but with veto power."[87] According to Senator Reid, the Minister had the power to initiate action in seventy-eight sections of the previous Act. Bill 267 (1950) reduced this to twenty sections. Bill 79 continued only twenty-six clauses giving such powers to the Minister.[88]

The Minister's intervention in most band and personal matters now required approval by the Indians. Band had greater autonomy in the management of their reserves. Historian John Tobias has noted: "As many as fifty sections and sub-sections were deleted from earlier Acts because they were antiquated or too restrictive on individuals of the band."[89]

Since the earliest legislation, the restrictive sections of the Indian Act had become increasingly complicated, particularly in respect to intoxicants.

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Indians had also been forbidden to perform certain ceremonies and dances, sell their produce or stock without Agent permission, and had required permission to attend fairs and rodeos. As late as 1941, the Government had enacted amendments to regulate Indian trade in furs across Canada. These sections, with the exception of the latter which was amended by section seventy-two, were excluded from the 1951 statute (15 George VI, chapter 29).

For the most part, these restrictions had been added to the Act between 1890 and 1918. At that time, the Department tended to view the slow advancement of Indians towards "responsible citizenship" as an impediment to the growth and development of Canada. Measures to utilize Indian lands more productively, to reduce tribal practices and protect goods given them by Government characterized the policies of Sifton's and Oliver's administration. This approach eventually changed to a belief that Indians could manage their affairs and lands without direct government supervision. Thus the 1951 Act removed provisions respecting expropriation and removal of reserves adjoining towns and leasing of reserve lands to non-Indians. Nevertheless, it retained a conditional permit system for sale or barter of animals and farm produce by Indians on reserves in Western Canada.[90]

The sections dealing with estates and the descent of property, haphazardly enacted since 1880, were simplified to reduce conflict with provincial legislation. The intent, however, was the same - to ensure that dependents were provided for and that no real property on a reserve would pass into the hands of a person not entitled to reside on the reserve.[91]

Parliament had passed the Indian Advancement Act in 1884 to promote integration of Indian communities with the rest of Canadian society through greater self-government. This Act and later amendments had become Part Two of the consolidated Indian Act in 1906. In the 1951 Act, these provisions were combined with the sections of Part One on the election of chiefs and councils to become the local government portion of the new Act.[92] The powers accorded to "municipal" councils in the Advancement Act were extended to band councils.

Despite argument to the contrary, the powers of the Ministry and Governor-in-Council remained formidable. Administration of over half of the Act was at the discretion of the Minister or Governor-in-Council, the latter being empowered

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to declare any or all parts of the Act inapplicable to any band or individual Indian, subject only to another statute or treaty.[93]

In respect to enfranchisement, the arbitrary power of the Minister to petition the Governor-in-Council to declare an Indian enfranchised without his consent (enacted in 1920, repealed in 1922 and re-enacted in 1933 in a milder form) was absent from the 1951 Act. In every other respect, the enfranchisement process remained the same.

The Government's agressive "assimilation" and "citizenship" policies after 1880 had not been as successful as expected. In spite of the special prohibitions they faced under the Act, most Indians refused to surrender their separate legal status, treaty rights, and privileges to take on the responsibilities of citizenship. If the Indian Act did indeed govern the relationship between Indians and Canadian society at large, it would seem that little had changed in that relationship by 1951. At least, neither of the parties to the relationship acknowledged changes to the extent that new legislation was necessary to cope with them.[94]

Similar to its predecessors, the 1951 Act required some clarification and revision. During the next decade Parliament passed certain amendments to clarify the statute. Amendments in 1953 dealt with loans to Indians for purchase of farm equipment and for bringing new land under cultivation. They also concerned the sale and patent of surrendered lands as well as the right to seize minerals or other resources unlawfully taken from reserves.[95]

Amendments in 1956 were, as the Minister of Citizenship and Immigration J.W. Pickersgill advised the Commons on 24 July 1956, intended "to tidy up a few points that in the course of administration, proved not to be as well drafted as perhaps it was thought they were when the Act was passed in 1951."[96] They dealt with verification of Indian status, application of the Act, membership of illegitimate children, band transfers and admissions, location tickets, land-surrenders, expenditure and recovery of Indian funds, enfranchisement, schools and intoxicants.[97]

In 1958 John Diefenbaker's Conservative Government advocated giving the Federal franchise to Indians without endangering any of their treaty rights or other privileges. However, the only amendment passed that year concerned persons entitled to be registered as "Indians."[98] In 1960, restrictions against residents of reserves voting in federal elections were repealed.[99]

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An Indian's right to vote at federal elections without waiving his exemption from taxation marked a definite change in the "citizenship" policies of former administrations. It was a significant step in giving Indians a greater voice in managing their own affairs.

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PART TWO

THE POST-CONFEDERATION PERIOD

CHAPTER FOUR

Canadian Indian Policy Initiatives: 1867-1876

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CHAPTER FIVE

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CHAPTER SIX

1886-1906: A Period of Disillusion

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CHAPTER SEVEN

The Impact of Immigration and WWI: 1906-1927

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CHAPTER NINE

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SUMMARY

In the days when Canada was a sparsely settled rural society, few regulations were needed to govern the relationship between Indian people and the "white" community. As Canada grew, both in territory and population, increased regulation became necessary to define the evolving relationship. Thus the Indian Act became more complex and intruded more and more into the daily life of Indian people. As Professor J.E. Hodgetts remarked in Pioneer Public Service (1955):

> Thus a policy devised in the 1830's was reiterated, elaborated, and carried forward to Confederation. Almost intact it has served up to this day as the guiding star for administrators of Indian Affairs. Probably in no other sphere has such continuity or consistency or clarity of policy prevailed; probably in no other area has there been such a marked failure to realize ultimate objectives.

In Professor Hodgetts' view the main thrust of Indian policy after 1830 was to "civilize" Indians and then "assimilate" them into the "white" community. This meant "raising them to the moral and intellectual level of the white man and preparing them to undertake the offices and duties of citizens."

The obvious continuity in policy is more striking when one examines statements, made 80 years apart, by two Ministers of Indian Affairs. In 1880 Sir John A. Macdonald stated that government Indian policy was

> ... to wean them by slow degrees, from their nomadic habits, which have almost become an instinct, and by slow degrees absorb them or settle them on the land. Meantime they must be fairly protected.
>
> (House of Commons Debates, 5 May 1880).

In 1950, Walter E. Harris reviewed past policy and announced the new:

> The ultimate goal of our Indian policy is the integration of the Indians into the general life and economy of the country. It is recognized, however, that during a temporary transition period of varying length, depending upon the circumstances and stage of development of different bands, special treatment and legislation are necessary.
>
> (House of Commons Debates, 29 June 1950).

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Perhaps the only perceptible change up to and including 1951 was one in semantics: Indians were now to be "integrated" rather than "assimilated". They were to become first class citizens living in the "mainstream" of Canadian society. At regular intervals, for one hundred and forty years, essentially the same policy has been "re-discovered" and redefined to serve government objectives. However, it has only sustained failure in accomplishing what it set out to do, the merits or evils of the ultimate goal notwithstanding.

The present Indian Act supposedly exists to regulate and systematize the relationship between Indian people and the majority society. Paradoxically, while it is intended to be a mechanism for assimilation, the Indian Act isolates Indian people from other Canadians. The policy goal and legislation are contradictory.

Since colonial times European attitudes towards Indian people have repeatedly changed and this situation was often reflected in legislation. Early concerns were the liquor traffic, unscrupulous traders, and land speculators. By Confederation, suspicion and fear had given way to benevolence and a desire to protect Indians until they chose to take their place in society. To that end, Indian legislation dealt mainly with protecting reserve lands from trespass and damage, and Indian people from the social evils of local towns.

By the turn of the century, society had grown impatient. It saw Indian people in possession of large fertile tracts of land, often not fully utilized, which were in many places a hindrance to settlement and commercial expansion. The protections in the Act were reduced and measures to acquire reserve land, with or without Indian consent, were introduced.

By 1920 this impatience had become so great that compulsory enfranchisement was introduced in the Indian Act. Finally, after World War II, a time of concern with social problems, the Indian Act was changed to remove most of the more discriminatory and repressive provisions. However, there was no change in the underlying philosophy and assumptions about the relationship between Indian people and "white" society.

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The Indian Act of 1951 continued to draw Indian criticism. The Department of Indian Affairs, successor to earlier administrative arrangements, and to a large extent the sole arm of government which Indian people encountered, was also attacked for its intransigence, red tape, and lack of innovation. Faced with such discontent, in the mid-1960's the Department embarked on a series of measures to canvass Indian opinion concerning prospective legislative changes. This process was highlighted by the issuance of "Choosing a Path", the Hawthorn-Tremblay Report, and a series of country-wide consultation meetings.

In June 1969, a White Paper on Indian Policy was tabled in the House of Commons. The Indian Act was to be repealed, the Department phased out over a five-year period, and a transfer to the provinces of federal services to Indians undertaken. The Indian people rejected these proposals and in 1970, faced with near unanimous opposition, the Federal Government shelved the Paper. The Indian people made their objections clear in publications such as the "Red Paper" (Indian Association of Alberta), "Wahbung" (Manitoba Indian Brotherhood), and Harold Cardinal's Citizen's Plus. They wanted the Indian Act to remain, but with significant changes.

Various initiatives for more Indian participation in the decision-making process have been made in the intervening years. In 1978 the Federal Government and Indian people are again seeking change and possible legislative amendments.

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